TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 206.

THE CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION, PETITIONER,

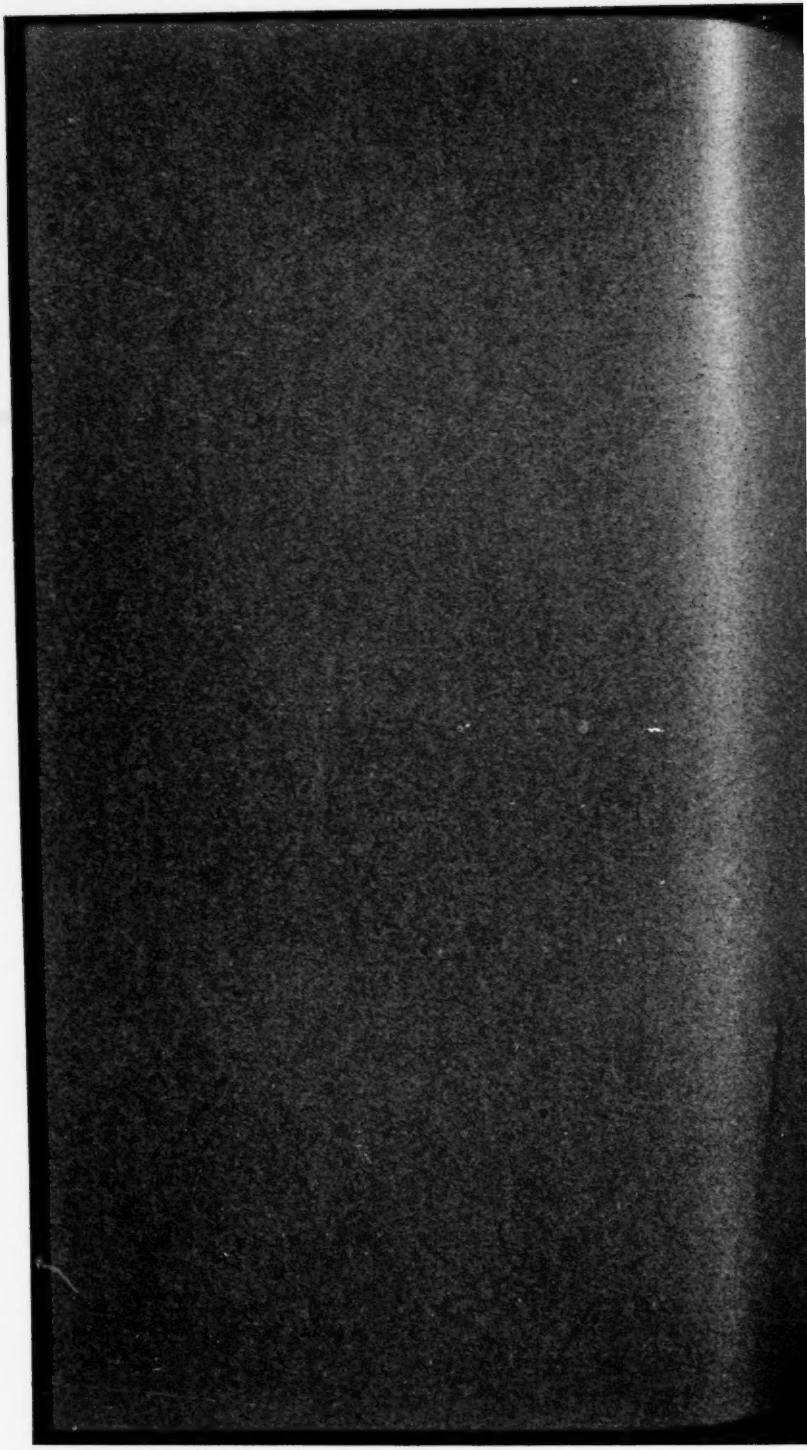
vs.

WILLIAM H. DENSON AND ROSA E. DENSON.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 7, 1901.
CERTIORARI AND RETURN FILED JANUARY 21, 1902.

(18,345.)



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a *Caption.*

UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun and held in the court-room of said court, in the city of New Orleans, in the State of Louisiana.

Present and presiding, the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit.

Present also the Honorable A. P. McCormick and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

WILLIAM H. DENSON and ROSA E. DENSON, Appellants,
versus
CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION, Appellees. } No. 1028.

Be it remembered, that heretofore, to wit, on the 21st day of January, 1901, a transcript of the record of the above styled and numbered cause from the circuit court of the United States for the southern division of the northern district of Alabama was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit, in the words and figures following, to wit:

1 *Bill of Complaint.*

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION
versus
W. H. DENSON and Wife, ROSA E. DENSON. } No. 109. In Equity.

To the honorable the judges holding the court aforesaid:

Your orator, The Chattanooga National Building and Loan Association, a corporation chartered, organized and doing business under the laws of Tennessee and a citizen of said State, brings this its bill of complaint against W. H. Denson and wife Rosa E. Denson, who are citizens of the State of Alabama, and inhabitants of the southern division of the northern district of Alabama, and avers and charges:

1.

That your orator is a corporation chartered and organized under the statutes of the State of Tennessee, as aforesaid, having its principal office and legal domicile in the city of Chattanooga, Tennessee, and that it is authorized and empowered by its charter to lend its

funds to its stockholders on such terms and conditions and in such manner and under such regulations as may be prescribed by its constitution and by-laws, such loans to be secured by real estate; and in order to determine which one of the stockholders shall receive the loan, where there are a number simultaneously applying for it, your orator's board of directors is authorized by the statutes and the charter aforesaid to loan the funds in the treasury either in open meeting, or by action on written application and bids, at a rate of interest not in conflict with the laws of the State of Tennessee, to the 2 stockholder or stockholders who will bid the highest premium for the privilege of obtaining such loan; the premium so bid to be repaid by the borrower in regular weekly or monthly instalments, not as part of the loan or as interest, but as a means of determining the right, as among competing stockholders, to obtain the loan. Your orator will file a duly authenticated copy of its charter, constitution and by-laws on or before the hearing.

2.

The defendant, W. H. Denson, was on April 25th, 1895, the owner of fifty shares of the stock of your orator, and on the said date he made a written application to your orator's president and board of directors for a loan of $2500 on said stock, and offered a premium of $2500 for the privilege of obtaining said loan. He also offered in said application, to secure said loan and the premium bid by him as aforesaid by a mortgage or deed of trust on the real estate hereinafter described. Said application is now in your orator's possession, and the same will be produced and filed on or before the hearing.

3.

Your orator's board of directors duly considered said application and bid; and there being money in the treasury subject to loan, and the security offered by said Denson having been approved, and the premium bid by him being the highest that was offered for the money desired by him, he became and was entitled to receive said loan, on compliance by him with the stipulations and conditions of his said application and he was so notified. Thereupon on the 10th of June, 1895, your orator advanced or loaned said defendant the sum of $2500, and he executed to your orator his promissory note for the sum of five thousand dollars ($5000) to cover the $2500 loaned him, and the premium bid by him for said loan as aforesaid. Said note is dated and payable at the home office of your orator in Chattanooga, Tennessee, and is due on or before nine years from date; and it recites that it is for money borrowed of your orator on fifty shares of its stock, and that if the maker shall pay promptly the monthly interest on the sum of $2500, and shall pay the monthly dues on his said shares of stock, together with any fines assessed against the same under the rules of the association, until said stock becomes fully paid in and of the value of $100 per share, and shall pay all taxes and insurance premiums on the property conveyed in the mortgage given to secure said note, then upon the surrender of said stock to your ora-

tor said note shall be deemed fully paid and cancelled. But
3 it is further stipulated that if the maker shall fail to pay promptly, when due and payable, the said taxes or insurance premiums, or shall make default in the payment of the monthly interest, fines and monthly payments on said stock, for a period of six months after the same or any instalment thereof is due, then, at the option of your orator, the whole indebtedness evidenced by said note, including any taxes and insurance premiums due or paid by your orator, shall at once become due and collectable, and a foreclosure of said mortgage may be had in the manner therein provided, in which event the maker agrees to pay reasonable attorneys' fees for collecting any amount that may be due. Said note further expressly stipulates that it is made with reference to and under the laws of the State of Tennessee, and that if it shall be paid before seven years from its date, such rebate from the premium included in it will be allowed as your orator's board of directors shall deem equitable. Your orator herewith files said note as Exhibit "A" to this bill, and prays that it may be taken and treated as a part hereof.

4.

To secure the payment of said note the said W. H. Denson and his wife, the defendant Rosa E. Denson, executed to your orator a mortgage conveying certain real estate in the town of Gadsden, Etowah county, Alabama, described as follows: Being the lot on which W. H. Denson now resides, and described as lot No. four (4) according to Pope's map of the city of Gadsden; said lot fronts one hundred and fifty (150) feet on Forrest avenue, and extends back a uniform width a distance of about three hundred and twenty-five (325) feet to Chestnut street, said lot is bounded on the west by W. C. Bellinger's lot, and on the east by W. R. Dortch's lot. Also three lots on Forrest avenue, commencing at the corner of Tenth street and Forrest avenue, and running west one hundred and fifty (150) feet along Forrest avenue; thence running south one hundred and seventy-five (175) feet; thence east one hundred and fifty (150) feet, to Tenth street, thence along with Tenth street to the beginning point. Three lots commencing at the corner of Tenth street and Third avenue and running west one hundred and fifty (150) feet, thence north one hundred and twenty-five (125) feet, thence east one hundred and fifty (150) feet to Tenth street, thence south along Tenth street to the beginning point. Also two lots commencing at the corner of Eleventh street and Third avenue, and running along west with said avenue one hundred and twelve and one-half (112½) feet; thence north to Dr. Thornton's two garden paling-;
4 thence one hundred twelve and one-half (112½) feet to Eleventh street; thence south along said Eleventh street to the beginning point.

It is stipulated in said mortgage that if the said W. H. Denson shall comply with the stipulations in the note aforesaid, till the same shall be paid or cancelled as therein provided, then said mortgage shall be void; but that if default shall be made in the per-

formance of any of said stipulations, a foreclosure of the mortgage may be had by advertisement and sale of the property conveyed, such sale to be for cash in hand and in bar of the equity of redemption, all claim to any right of redemption and to homestead and dower in said lands being expressly waived. The mortgage aforesaid is herewith filed, marked Exhibit "B" and is prayed to be taken and treated as part of this bill.

5.

The defendant Denson has utterly failed and refused to comply with the stipulations and conditions of his note aforesaid, although your orator has repeatedly requested and demanded of him performance of the same. Defendant has paid nothing whatever on said indebtedness for over three years. He paid the dues on his said stock, and the interest on his said loan as stipulated in his said note, for a period of sixteen months, the total payment of dues on said stock amounting to $480. Defendant has failed and refused to keep the property covered by said mortgage insured, and to pay the taxes thereon according to his contract, and your orator has been compelled for its own protection, to pay insurance premiums on said property aggregating $45, and to pay taxes assessed against the same aggregating $223.84, all of which the defendant agreed to pay, and all of which he failed and refused to pay although repeatedly requested to do so. And by the terms and provisions of the note and mortgage aforesaid, the sums so paid out by your orator for insurance, premiums and taxes constitute a part of the indebtedness due from said defendant to your orator, and the repayment of the same is secured by said mortgage.

The defendant now denies and repudiates any obligation on his part either to return to your orator the money borrowed of it by him or to comply with the stipulations of his contracts aforesaid. He asserts the proposition that your orator can neither enforce said contracts nor in any other manner compel him to repay said loan; and he has announced his intention and purpose to enjoin your orator if it shall make any effort to foreclose its mortgage by summary advertisement and sale as therein provided.

5 Your orator some months ago caused the property conveyed by the mortgage aforesaid to be advertised for sale, in foreclosure of the same, on account of the continued default of defendant as aforesaid; whereupon said Denson filed a bill in the chancery court at Gadsden, Alabama, against your orator, averring that said note and mortgage were usurious and void, and that your orator was not entitled to enforce them. It was admitted in the face of said bill that the amount originally loaned said defendant by your orator exceeded all payments that had been made by defendant, both as interest and dues on stock, by the sum of $1820, and that fact that your orator had paid taxes and insurance premiums on said property aggregated nearly $300 for which defendant was liable to it, was in no manner referred to in said bill. Your orator has removed said suit into this court, where it is now pending, and the record therein will be read and referred to as often as may be neces-

sary on the trial of this cause. On account of the filing of said bill, your orator's remedy for foreclosing said mortgage by execution of the power of sale therein given has been greatly embarrassed. On account of the many false allegations, and unsound legal conclusions set up in said bill, your orator's rights under its said mortgage and note were beclouded and the property if sold under the conditions now subsisting, would bring but a small proportion of its value. For these reasons, and in order that the amount due your orator on said note may be fixed by decree in advance of a sale, and in order that it may have an opportunity to bid at the sale of the property and so protect its interests, your orator has elected to foreclose its said mortgage through your honor's court of equity, instead of by exercise of its power of sale, being advised that the remedy afforded it by said power of sale is merely cumulative and does not take away or in any manner interfere with the inherent jurisdiction of a court of equity over the subject-matter.

6.

Your orator has elected in accordance with the option given it in and by the note aforesaid, to treat and declare the entire amount owing to it from defendant W. H. Denson as due and collectable. It avers that the said defendant is justly indebted to it on said note in the sum of $2500, being the amount loaned to him, and the further sum of $2500, being the premium bid by him for the privilege of obtaining said loan, and also for the taxes and insurance premiums paid by it on the property covered by the mortgage aforesaid, and which aggregate, as already hereinbefore stated, the sum
6 of $268.84. Said defendant is entitled to credit for the surrender value of his stock aforesaid, being the sum of $480, the monthly dues on said stock paid by him for the sixteen months immediately following the loan and the profits earned thereon, being the sum of $68.80; but in the event he now withdraws his said stock, defendant is chargeable with a withdrawal fee of $1 per share as provided by the by-laws. Your orator's board of directors has also given defendant credit for one-half the premium bid by him for said loan, under that stipulation in the note which authorizes said board to allow defendant such rebate from the premium as it shall deem equitable, if the loan is repaid before seven years from its date. The defendant is also liable for interest on the $2500 borrowed by him as aforesaid, from the expiration of sixteen months from the date of the loan, he having paid interest thereon only for sixteen months. The total amount due from defendant to your orator, exclusive of interest and costs, is the sum of $3520.04. It is also stipulated by the note and mortgage aforesaid, that in the event of default in the performance by the defendant of the stipulations of his said contract, and a foreclosure of the mortgage on account thereof, said defendant shall pay a reasonable attorney's fee for collecting the amount due on said note. And your orator is advised and charges that under this provision it is entitled to recover a reasonable attorney's fee from defendant, the amount thereof to be fixed by the court, and paid out of the proceeds of the foreclosure sale.

7.

Your orator shows unto your honors that the defendant W. H. Denson is in the possession and enjoyment of said property, and of the rents, profits and income thereof, and that he refuses to apply any part of said rents, profits or income either to the satisfaction of the principal and interest of his said indebtedness to your orator, or to the taxes and insurance premiums thereon which he expressly agreed and stipulated with your orator that he would pay.

Said property is depreciating in value, and has depreciated greatly in value since the mortgage aforesaid was executed; and your orator avers that it is not now adequate and sufficient security for the amount due from defendant on the indebtedness aforesaid. The defendant W. H. Denson is utterly insolvent.

8.

Forasmuch therefore, as your orator is without remedy save in this honorable court of equity, your orator prays:

7 1. That your honors' writ of subpœna issue, directed to defendants, W. H. Denson and wife, Rosa E. Denson, requiring them to appear by a day certain and make defense to this bill; but the answer of the defendants under oath is hereby waived.

2. That a receiver be appointed to take charge of the property embraced in defendants' mortgage, and to receive the rents and profits thereof pending this litigation, and to apply the same to the payment of taxes and insurance on said property and to hold the balance subject to the orders of the court.

3. That all such references may be ordered and accounts taken as may be necessary to ascertain the amount justly due your orator from defendants on the indebtedness aforesaid, and that a decree be rendered for such amount, with interest, attorneys' fees and all costs.

4. That the land described in and conveyed by the mortgage aforesaid be sold under the orders and decrees of the court, on the terms stipulated in said mortgage, to wit: for cash in hand and in bar of the equity of redemption and of homestead and dower, for the payment of the amount ascertained to be due your orator as aforesaid.

5. That all such decrees be pronounced and such conveyances executed under the orders of the court as may be necessary to vest the title to said property in the purchaser, and that all subsequent claims, liens and encumbrances and all right and equi*rt* of redemption in the said premises be forever barred.

6. That your orator may have all such other, further and general relief as the nature of the case may require, and as to your honors may seem right and proper and agreeable to equity.

PRITCHARD & SIZER,
Sol'rs for Complainant.

STATE OF ALABAMA, }
Jefferson County. }

Personally came J. F. Johnston, secretary of The Chattanooga National Building and Loan Association, the within-named complainant, who, being duly sworn, deposes and says that the statements in the foregoing bill, where made of complainant's own knowledge, are true, and those made as on information and belief he believes to be true.

J. F. JOHNSTON.

Sworn to and subscribed before me this 25th day of August, 1899.

N. W. TRIMBLE,
Clerk U. S. Cir. Court.

8 EXHIBIT "A."

$5000.00. CHATTANOOGA, TENNESSEE, *June 10th*, 1895.

On or before nine years from date I promise to pay the Chattanooga National Building and Loan Association, at its home office, Chattanooga, Tennessee, five thousand dollars with interest on the sum of twenty-five hundred dollars, at the rate of six per cent. per annum, payable monthly. This note is for money borrowed on fifty shares of the forty-fourth series of the stock of said association, and is secured by a mortgage or deed of trust of even date herewith upon a lot of land in the county of Etowah, and State of Alabama. Now if I promptly pay the monthly interest on said sum of $2500.00, and the monthly payments on said shares of stock, and any fines assessed under the rules of said association, and the taxes accruing on the lot of land described in the mortgage or deed of trust securing this obligation and the premiums necessary to keep the house on said lot insured in such sum as said association may require, not exceeding ($3000.00) until the said stock becomes fully paid in and of the value of $100 per share, then it is understood that upon the surrender of said stock to said association, this note shall be deemed fully paid and cancelled. But if I fail to pay promptly when due and payable the said taxes and insurance premiums or make default on the payment of said monthly interest, fines and monthly payments on said stock for a period of six months, after the same are or any instalment thereof is due, then, at the option of said association, the whole indebtedness evidenced by this obligation (including any taxes, and insurance premiums due or paid by the association) shall at once become and be due and collectable, and a foreclosure of said mortgage in the manner therein provided may be had, and in that event I agree to pay reasonable attorney's fee or commission charges for collecting any amount that may be due. It is further understood that this note is made with reference to and under the laws of the State of Tennessee and if paid before seven years from its date, such rebate from the premium included herein will be allowed as the board of directors of said association shall deem equitable.

Witness our hand and seal the day and year first above written.
W. H. DENSON. [SEAL.]

(Indorsed:) Filed August 25th, 1899. N. W. Trimble, clerk.
(Indorsed on back:) No. —. Note. W. H. Denson, Gadsden, Ala., to the Chattanooga National Building and Loan Association.

9 EXHIBIT "B."

This indenture made this 10th day of June, A. D. 1895, between W. H. Denson and his wife Rosa E. Denson of the county of Etowah and State of Alabama, of the first part, and the Chattanooga National Building and Loan Association (duly incorporated under the laws of the State of Tennessee, and having its home or principal office at Chattanooga, Tennessee), of the second part.

Witnesseth: That for and in consideration of one dollar in hand paid, and the other considerations hereinafter mentioned and fully set forth, the parties of the first part have bargained and sold, and hereby transfer and convey unto the party of the second part the following-described property, to wit: That certain lot or parcel of land situated in the city of Gadsden, Etowah county, in the State of Alabama, and described as follows: Being the lot on which W. H. Denson now resides and described as lot No. four (4) according to Pope's map of the city of Gadsden; said lot fronts one hundred and fifty (150) feet on Forest avenue, and extends back of uniform width a distance of about three hundred and twenty-five feet (325) to Chestnut street. Said lot is bounded on the west by W. C. Bellinger's lot, and on the east by W. R. Dortch's lot. Also three lots on Forest avenue, commencing at the corner of Tenth street and Forest avenue, and running west one hundred and fifty (150) feet along Forest avenue, then runs south one hundred and seventy-five (175) feet, thence east one hundred and fifty (150) feet to Tenth street, thence along with Tenth street to the beginning point; three lots commencing at the corner of Tenth street and Third avenue, and runs west one hundred and fifty (150) feet, thence north one hundred and twenty-five feet (125) thence east one hundred and fifty (150) feet to Tenth street, thence south along with Tenth street to the beginning point. Also two lots commencing at the corner of Eleventh street and Third avenue, and running west along said avenue one hundred and twelve and a half (112½) feet, thence north to Dr. Thornton's two garden paling-, thence one hundred and twelve and one-half feet to Eleventh street, thence south along said El-venth street to the beginning point.

To have and to hold the same, and all the improvements thereon, and all thereunto belonging and appertaining unto the said second party in fee. The parties of the first part covenant with the said second party that they are lawfully seized of said premises; have
10 good right to convey the same, and that they are unincumbered, and do warrant the title thereto, and bind themselves and their personal representatives forever to defend the same against the lawful claims of all persons.

But this conveyance is in trust, and for the following uses and purposes, that is to say: The said W. H. Denson of the first part is a member of said Chattanooga National Building and Loan Association, and owns fifty shares of the forty-fourth series of stock therein, and has obtained a loan of five thousand dollars thereon, for which he has executed his note or obligation, of even date herewith, payable to the said association at its home office on or before nine years from date, with interest at the rate of six per cent. on the sum of twenty-five hundred dollars, payable monthly, and in which note are the following stipulations and conditions: "Now, if I pay the monthly interest on said sum of twenty-five hundred dollars, and the monthly payments on said shares of stock, and any fines assessed under the rules of said association and the taxes accruing on the lot of land described in the mortgage or deed of trust securing this obligation, and the premiums necessary to keep the house on said lot insured in such sum as said association may require (not exceeding $3000.00) until the said stock becomes fully paid in, and of the value of one hundred dollars per share, then it is understood that upon the surrender of said stock to said association this note shall be deemed fully paid and cancelled. But if I fail to pay promptly when due and payable the said taxes and insurance premiums, or default in the payment of said monthly interest, fines and monthly payments on said stock for a period of six months after the same are, or any installment thereof is due, then, at the option of said association the whole indebtedness evidenced by this obligation (including any taxes and insurance premiums due or paid by said association) shall at once become and be due and collectable, and a foreclosure of said mortgage in the manner therein provided may be had." And in that event I agree to pay reasonable attorney's fee, or commission charges for collecting any amount that may be due.

It is further understood that this note is made with reference to, and under the laws of the State of Tennessee, and if paid before seven years from its date such rebate from the premium included herein will be allowed as the board of directors of said association shall deem equitable.

Now, if the said W. H. Denson shall comply with his undertakings in said obligation till the same be paid or cancelled as therein provided, then this conveyance shall become and be void.

11 But, if default be made in all, or in any one of the particulars mentioned in said note which shall make the same due, then a foreclosure hereof may be had upon the following terms: The second party, by its president or other duly authorized officer or agent shall give notice of the time, place and terms of sale by at least three insertions of an advertisement in some weekly newspaper published in said county of Etowah or if there be no newspaper, by printed hand-bills posted at not less than five conspicuous places in said county, one of which shall be at the court-house door (the said posting or the first publication of said advertisement to be at least twenty days before the day of sale) and on the day fixed, and between the hours of 11 a. m. and 12 m., in front of the door of the

court-house of said county, said officer or agent shall proceed to sell said property at public auction, to the highest bidder for cash in hand and in bar of equity of redemption of the first parties, which is hereby expressly waived and released, and the proceeds apply as follows: (1) To the expenses of sale. (2) To discharge the amount due the second party, and, (3) the residue, if any, will be paid to W. H. Denson, of the first part, or his order. Qualification by the second party under the statute is waived; and the first parties also waive and release all claim to homestead and dower in the property herein described.

This deed is non-negotiable non-transferable and cannot be hypothecated or pledged as collateral security.

In witness of all which, the parties of the first part have hereunto set their hands and seals the day and year first above written.

W. H. DENSON. [SEAL.]
ROSA E. DENSON. [SEAL.]

THE STATE OF ALABAMA, }
Etowah County. }

I, John C. Pugh, notary public, hereby certify that W. H. Denson, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this the tenth day of June, 1895.

[NOTARIAL SEAL.] JOHN C. PUGH,
Notary Public, Etowah Co., Ala.

THE STATE OF ALABAMA, }
Etowah County. }

I, John C. Pugh, notary public, hereby certify that on this the 10th day of June, 1895, also came before me the within-named Rose E. Denson, known to me to be the wife of the within-named
12 W. H. Denson, who being by me examined separate and apart from her husband, touching her signature to the within conveyance, acknowledged that being informed of the contents she signed the same of her own free will and accord without fear, constraints or threats on the part of her husband. In witness of all of which I hereunto set my hand this the 10th day of June, 1895.

[NOTARIAL SEAL.] JOHN C. PUGH,
Notary Public, Etowah Co., Ala.

Filed August 26th, 1899:

N. W. TRIMBLE, *Clerk.*

(Indorsed:) No. 109. Chattanooga National Building & Loan Association *vs.* W. H. Denson, *et als.* Original bill. Filed August 25th, 1899. N. W. Trimble, clerk.

Subpœna in Equity.

The President of the United States of America to the marshal for the northern district of Alabama, Greeting:

You are hereby commanded to summon W. H. Denson and Rosa E. Denson, his wife, if he be found in your district, that they, laying aside all excuse, appear personally at the office of the clerk of the circuit court of the northern district of the State of Alabama, southern division, in the city of Birmingham, in said district on the rule day, to be held on the first Monday in October, next, to answer, plead or demur to the bill of complaint exhibited in said circuit court by Chattanooga National Building and Loan Association, complainant, against W. H. Denson and Rosa E. Denson, defendants. A copy of which will be furnished on application to the clerk. Herein fail not, and have you then and there this precept, with your return thereon indorsed.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25th day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

N. W. TRIMBLE,
Clerk U. S. Circuit Court.

Attest:
[SEAL.]

Issued 25th day of August, 1899.

MEMO.—The defendants are to enter their appearance, and to file their answer or demurrer to said bill, in the clerk's office on
13 or before the day on which this writ is returnable; otherwise a decree *pro confesso* may be entered. The marshal is required to execute this writ twenty days before the return day thereof.

(Indorsed:) No. 109. U. S. circuit court, in chancery. Chattanooga National Building and Loan Association *vs.* W. H. Denson and Rosa E. Denson. Subpœna in equity. Issued August 25th, 1899. Returned and filed August 28th, 1899. N. W. Trimble, clerk. Received in marshal's office this 25th day of Aug., 1899. D. N. Cooper, marshal. Executed this 25th day of Aug., 1899, by handing a copy of same to W. H. Denson and Rosa E. Denson. D. N. Cooper, U. S. M., by A. B. Mitchell, deputy.

Joint and Separate Answer of Defendants to Bill.

In the Circuit Court of the United States, Sitting at Birmingham, Alabama.

CHATTANOOGA NATIONAL BUILDING AND LOAN Association
vs.
W. H. DENSON ET ALS. } No. 109. In Equity.

Come the defendants, W. H. Denson and Rosa E. Denson, and in no manner waiving any right they or either of them may have to

interpose any objection or defense they can make to said bill for its many imperfections and illegalities, by way of motion, demurrer or plea, and file this as their joint and separate answer to complainant's bill.

First.

Defendants, answering the first paragraph of the bill, sayeth: That the averments of said paragraph are but mere opinions and conclusions of the pleader, and fail to set out and allege the facts upon which such conclusions and opinions are drawn and based, and that there are no facts presented by said allegations upon which an issue of fact can be joined between the complainants and the defendants. The defendants not knowing the laws of Tennessee, and not knowing what powers are conferred by the laws of Tennessee in the charter and by-laws of said association, deny each and every averment contained in said first paragraph of the bill, and demand proof of the same.

14 Second.

Defendants, answering the second paragraph of the bill, sayeth: That the averments of the said second paragraph of the bill are but mere opinions and conclusions of the pleader, and do not set out the facts upon which such opinions and conclusions are drawn and based and there are no facts presented by the averments embraced in said paragraph upon which an issue of fact can be joined between the complainant and the defendants. The complainant retains in its possession the instrument of writing which it calls a written application, and fails to set out said instrument in the bill, or attach the same as an exhibit thereto, and thus giving the defendant the opportunity of making a full answer to the said allegations as to its contents. Defendants are therefore prevented from making such answer to such allegations as they otherwise would, and therefore defendants are not required, and are unable to, answer more fully said allegations in said paragraph than they have done, and upon information of facts which defendants believe to be true, they deny each and every averment embraced in the second paragraph of the bill and demand proof of the same.

Defendants deny that on the 25th of April, 1895, the defendant, W. H. Denson, was the owner of fifty shares of stock of the complainant association. No shares of such stock were ever issued and delivered to defendant on the 25th of April, 1895, before or subsequent to said date. Defendant W. H. Denson never had in his possession, and never in his life saw a share, or any part thereof, of the stock of said complainant association, and was never at any time the owner of any shares of stock in said association. Never made any application to complainant to purchase shares of its stock. Defendants further answering sayeth, that on the 25th of April, 1895, in the city of Gadsden, Etowah county, Alabama, and nowhere else, the said complainant association made a proposition to defendant, W. H. Denson, to lend him twenty-five hundred dollars at six per cent. per annum interest thereon, and said defendant, W. H. Denson,

then and there agreed to borrow said sum of money from said association at said rate of interest. As a security for the payment of said sum of money, said association required said defendant, W. H. Denson, to execute a first mortgage on the real estate described in the fourth paragraph of the complainant's bill filed in this case, and that said real estate should be double the value of the amount, $2500.00, to be loaned, which would require the property to be worth $5,000.00; and further required that said real estate should be appraised and valued by a committee appointed by and representing the said association, which appraisement and report was had in this case, and accepted as satisfactory by said association.

Third.

Defendants, answering third paragraph of said bill, say*eth:* The written application referred to in the second paragraph of the bill not being set out in the bill, the defendants are not informed of its contents by the allegations set out in the bill, and are therefore unable to make an answer to the first sentence of the third paragraph of the bill as they otherwise would if said written application was set forth in said bill or attached as an exhibit thereto, and defendants deny each and every averment contained in the first sentence of the third paragraph of the bill and demand proof of the same. Defendants admit that on the 10th day of June, 1895, defendant W. H. Denson, executed the paper mentioned in said third paragraph of the bill.

Defendants most positively deny that on the said tenth day of June, 1895, the complainant loaned defendant, W. H. Denson, $2500.00, on the contrary, defendant only received on that day from complainant twenty-three hundred and seventy-two 50/100 ($2372.50) dollars, and this amount is all the cash said defendant ever received from complainant on the transaction mentioned, or any other transaction.

Defendants admit that while the said promissory note is dated Chattanooga, Tenn., yet the truth is, said note was not executed in Chattanooga; Tennessee, but was executed by said defendant, W. H. Denson, in Gadsden, Etowah county, Alabama, and at no other place, and was delivered by said Denson to said association in said city of Gadsden, and in no other place. Defendant W. H. Denson never had any interview, conversation, agreement or transaction whatever with the complainant association in Chattanooga, Tennessee, as to any matter whatever, and specially as to the transaction set forth and mentioned in the bill. The money paid to said W. H. Denson on said transaction mentioned in the bill was paid to him in the city of Gadsden, Etowah county, Alabama, by the First National Bank of Gadsden, a national bank organized at and doing business in the city of Gadsden aforesaid, and said money was received by him at said bank and paid to him at no other place than in said city of Gadsden.

Defendants further answering, say*eth* that the defendant, W. H. Denson, made different payments on said note and transaction,

amounting in all to six hundred and eighty ($680.00) dollars or more, and each of the said payments was made in the said city of Gadsden, and no other place, and these payments ran through
16 a period of thirteen or more different months. Defendants aver that said association charged defendant W. H. Denson, $42.50, for the month of May, 1895, and the same amount for June, 1895, and the same amount for July, 1895, when in fact, said defendant did not receive any money from said association until the 10th day of June, 1895, and thus said association collected dues and interest from said defendant before he ever received any money from it.

Defendant- further answers said third paragraph of the bill, and say: That the alleged recital in said third paragraph of the bill, "that (the promissory note) is for money borrowed from your orator on fifty shares of stock" is false and untrue, as said defendant, W. H. Denson, was never at any time a stockholder in said complainant association, as is fully shown in defendants' answer to the second paragraph of the bill, which answer is here made part of defendants' answer to this the third paragraph of the bill so far as the allegation relates to the said W. H. Denson being a stockholder in said association.

Defendants, further answering the said third paragraph of the bill, say*eth:* That on the 19th day of June, 1895, the day on which defendant W. H. Denson, executed said promissory note and the said mortgage, the said association, at the same time and as a part of the same transaction, and before the said money was paid over to said defendant W. H. Denson, required said Denson to execute a written instrument showing a surrender of the said number of said 50 shares of stock in said association, to said association, although the said Denson at that time and at no other time ever had in his possession any shares of stock in said association, and no such shares of stock were ever delivered to said Denson, and said Denson never made any application to said complainant to buy any stock, and so far as defendants are informed, and believe to be true, no such shares of stock were ever issued by said association and defendant has never owned any stock in said complainant association.

Fourth.

Defendants, answering the fourth paragraph of the bill, say: If Exhibit "B" is a true and correct copy of the original mortgage and the averments in this paragraph of the bill in relation to the contents thereof are taken from said original mortgage, then the same are true, otherwise the same are false and untrue, and defendants demand proof of the same. Defendants answering say: That said mortgage was signed and executed by them in the city
17 of Gadsden, Etowah county, Alabama, and at no other place, defendants answering say that said mortgage was acknowledged by them in said city of Gadsden, before John C. Pugh, a notary public in and for said county of Etowah, Alabama, and before no other officer.

Fifth.

Defendants, answering the fifth paragraph of the bill, say: It is true W. H. Denson, defendant, had failed to comply with the stipulations and conditions of the said note. The reason he has not done so is apparent; the fact was demonstrated to said Denson, that the more he paid on said debt, it seemed, the larger the debt grew, and he concluded that the converse of the rule might operate, that the less he paid the less the debt would grow. But it seems that said defendant was mistaken and, like the Lerneau hydra, the more you kill the more the increase, the more you pay the greater the debt grows.

Defendants, further answering the fifth paragraph of the bill, say: If it is held that the account between the said association and defendant, W. H. Denson, shall be stated as the basis of a loan of twenty-five hundred dollars instead of the actual cash received on said loan of $2372.50, as heretofore shown, then the account will stand thus:

Amount loaned		$2500.00
	Interest.	Monthly dues.
1895.		
May	12.50	30.00
June	12.50	30.00
July	12.50	30.00
August	12.50	30.00
September	12.50	30.00
October	12.50	30.00
November	12.50	30.00
December	12.50	30.00
1896.		
January	12.50	30.00
February	12.50	30.00
March	12.50	30.00
April	12.50	30.00
May	12.50	30.00
June	12.50	30.00
July	12.50	30.00
August	12.50	30.00
	200.00	480.00
Aggregate payments		680.00
Amount due		1820.00

Defendant states that the foregoing statement is taken from the receipts now in the possession of W. H. Denson, given him by said association, and said payments should be credited on the principal sum loaned. Defendants are not aware of the amount of insurance premiums the complainant has paid, and demands proof of the same.

Defendants, further answering said paragraph, most positively deny that the complainant association has paid $223.84 taxes that have been assessed against the property named in said bill and mortgage, and demand proof of the same. The remaining allegations of the paragraph being merely an argument, and an opinion and conclusion of the pleader and failing to present material facts upon which an issue can be joined, defendants are unable to, and cannot answer said matters as they other(wise) would and could if facts were alleged, and not more arguments, opinions and conclusions of the pleader.

The bill referred to by complainant association, as having been filed by defendant, W. H. Denson, in the chancery court at Gadsden, Alabama, against complainant association, and by said association removed to this, the circuit court of the United States, was dismissed out of said circuit court, on the 4th of September, 1899, by the said circuit court upon the written consent and agreement of said association and defendant W. H. Denson, and said suit is not now pending in said circuit court, and has not been since the 4th of September, 1899.

Sixth.

Defendants, answering the sixth paragraph of the bill, say: The matters stated in said paragraph are peculiarly within the knowledge of the complainant and are not known to the defendants only as stated in said paragraph, defendants do not know that they are true, and they have to trust to complainant, and therefore they demand proof of the same. The note speaks for itself, and is the highest and best evidence of its own terms, obligations and provisions, and so is the said mortgage; copies of both of these instruments purport to be attached to the bill as exhibits, and if they are true copies, defendant- refers to them as full answer to all matters well pleaded in this paragraph of the bill.

19 Seventh.

Defendants admit the allegations embraced in the seventh paragraph of the bill, except the allegation that the property is depreciating in value, and has depreciated in value since the execution of said mortgage, and that said property is inadequate and insufficient security for the amount of the indebtedness and all other demands claimed to be due from defendant W. H. Denson, to said association, and for the payment of which it is claimed said property is liable to pay; and that defendant W. H. Denson is utterly insolvent.

Defendants, jointly severally and separately most positively deny the truth of each and all three of said statements set forth in this paragraph of the bill, and state that each and all of them are wholly and absolutely false and untrue. Defendants aver that said property is not now depreciating, and has not since the execution of said mortgage, depreciated in value; on the contrary, it is appreciating in value, and this appreciation in value is but the natural result of the general prosperity and rise in values that prevails in the mineral regions of Alabama, in which said property is situated. De-

fendants state that it is fairly and reasonably worth six thousand dollars.

Defendant, W. H. Denson, further answering the charge that he is utterly insolvent, states that he is the owner, and in possession in his own right of more property than is necessary to pay the claim of the said complainant ten times. This property consists mostly of real estate in the State of Alabama, and subject to the laws of said State, and to the payment of said defendant's debts, and such real estate is worth more than $2000.00. Such a price would be an exceeding low value for said real estate. Defendant owes but a small amount, compared with the property with which he has to pay. Admitting that the defendant owes the amount which the complainant claims, but defendant denies that he owes complainant such amount, and taking this debt in connection with all other debts due by said defendant, still defendant owns in his own right personal property in Alabama, and subject by the laws of said State to the payment of his debts, which personal property alone is worth more than enough to pay every debt he owes and leave all his real estate untouched.

Defendant, W. H. Denson, furthering answering said bill, says: The transaction and contract between complainant and this defendant was but a borrowing and lending of money, and all the paraphanalia and flummery as to shares and defendant becoming a stockholder in said association, and borrowing money or receiving an advance on said shares, and defendant offering a premium of $2500.00 or any other amount to secure the loan of said money, and the payment of monthly dues on said alleged shares of stock are all and each part and parcel of a cunningly devised scheme and a crafty contrivance by which the complainant could cover up, and hide his usury, and under cover of which complainant proposes to collect more than six per cent. per annum, the legal rate of interest allowed by the laws of Tennessee, for the use and loan of money.

Defendant, W. H. Denson, further answering said bill, says that the said note attached to said bill as an exhibit, and upon which the action is founded, is usurious and void for the interest thereon, under the laws of Alabama. Defendant avers that the amounts set forth in the answer to the fifth paragraph of the bill, as having been paid on said transaction, were made at the dates there stated, and that the same should be credited on the amount of money actually loaned, and applied in no other way, because of the matters and things set forth in this answer as a whole. And the complainant should not be allowed to credit the same on the said alleged stock, as this defendant was never a stockholder, and never had any such stock in his possession, or under his control, and because of the matters and things set forth in this answer as a whole, the complainant should not be allowed to collect more in this suit, from the said defendant, than the amount actually loaned, less all payments made by said defendant.

The said defendant, upon information of facts he believes to be true, *he* says the money was not allotted to him, at a competitive

bidding, but was allowed defendant at a fixed premium or amount, made and established by said association.

Eighth.

Defendants, further answering said bill, say: The complainant association did not lend said money to defendant, W. H. Denson, nor did said Denson borrow said money from said complainant to enable him to secure a home, or to aid defendant in building a dwelling-house for himself and family, and this transaction was outside of, and contrary to the charter of said complainant.

Defendants further answering said bill, aver that any law of Tennessee or any charter or by-law of this association that permits it under any guise, scheme or contrivance to loan money and collect a rate of interest more than six per cent. per annum, which is
21 the legal rate of interest of the State of Tennessee, and prohibits the same power and privilege to other individuals, associations or corporations, is contrary to and in conflict with the equality clause of the fourteenth amendment of the Constitution of the United States, and also contrary to the constitution of the State of Tennessee, which prohibits such inequality, and prohibits any person from being deprived of life, liberty or property without due process of law.

Defendants aver that the laws of the State of Tennessee, under which this association was established and organized permit such privileges and power to such association, and denies the same to all other individuals, associations and corporations, and therefore defendants aver that said laws to this extent are unconstitutional and void.

Ninth.

Defendants further answering said bill say: The complainant is a foreign corporation, and was not organized under the laws of Alabama, that the whole transaction and contracts set out in the bill were commenced and consummated in Gadsden, Etowah county, Alabama, and nowhere else. That the note and mortgage attached to said bill as exhibits, and which are referred to in said bill, and which constitute the basis of the action set forth in said bill, each and doth, was and were executed, acknowledged and delivered to said association in said city of Gadsden, Etowah county, Alabama, and at no other place, the money loaned on said note and mortgage, was paid to and received by defendant, W. H. Denson, at Gadsden aforesaid, and at no other place. That at the time when the transaction was first commenced, and at the time when said note and mortgage were executed, acknowledged and delivered to said association, at the place aforesaid, to wit: on the 10th day of June, 1895, and at the time the said money was paid to and received by the said Denson at the place aforesaid, the said complainant association had not complied with the conditions prescribed by the constitution and statutes of the State of Alabama, by and under which foreign corporations shall do any business in Alabama, which provide that no foreign corporation shall do any business in this State, or engage in,

or transact any business in this State without having at least one known place of business and an authorized agent or agents therein. That at such time and times the complainant association had not filed in the office of the secretary of state of Alabama as required by the statutes of Alabama, an instrument in writing under the seal of said association, and signed officially by the president and
22 secretary of said association, designating one known place of business in Alabama, and an authorized agent or agents residing thereat. And the complainant association had in the month of May and June, 1895, done business in said Gadsden, Etowah county, Alabama, with other parties of like and similar nature as that did with defendant, W. H. Denson, as herein stated in this the ninth paragraph of this answer, and without at such time and times having complied with the requirement of the constitution and statutes of Alabama, in regard to the conditions under which foreign corporations are permitted to do business in Alabama, as herein set forth in this 9th paragraph of this answer.

And defendants having fully answered said bill as they are advised as is necessary, they pray to be discharged hence with their reasonable cost in this behalf expended.

DENSON & TENNER,
Sol'rs for Defendants.

(Indorsed:) No. 109. Chattanooga National B. & L. Association vs. W. H. Denson, *et als.* Answer of defendants. Filed in office Sept. 21st, 1899. N. W. Trimble, clerk U. S. cir. court.

Replication to Answer.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

CHATTANOOGA NATIONAL BUILDING AND LOAN Association
vs.
W. H. DENSON and WIFE.
} No. 109. In Equity.

The above-named complainant, saving and reserving to itself all manner of exception which may be taken to said answer for replication thereto says: That it does aver, maintain and prove its said bill to be true, certain and sufficient in law, and that the answer of the defendants is uncertain, evasive and insufficient in law, without this, that any other matter or thing contained in said answer, material or effectual in the law to be replied to, and not herein sufficiently replied to, conferred, avoided, traversed or denied is untrue, and that the averments and allegations of the complainant's bill are true, all which matters and things this repliant is ready to aver, maintain and prove as this honorable court shall direct; and it humbly prays as in and by its bill it has already prayed.

PRITCHARD & SIZER,
Sol'rs for Compl'ts.

23 (Indorsed:) No. 109. Chattanooga National Building and Loan Association *vs.* W. H. Denson, *et als.* Replication to answer. Filed Nov. 1st, 1899. Chas. J. Allison, clerk.

Stipulations and Exhibits.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

CHATTANOOGA NATIONAL BUILDING AND LOAN Association *vs.* W. H. DENSON and WIFE. } No. 109. In Equity.

In this cause it is stipulated and agreed by and between the complainant and defendant-:

1. That the pamphlet hereto annexed and made Exhibit "A" to this stipulation is a full, true and correct copy of the charter and amendment thereto of the complainant Chattanooga National Building and Loan Association; and that the same may be read and considered in evidence on the trial of this cause as if it were duly authenticated as required by law, the defendants waiving the formal authentication thereof.

2. That the pamphlet filed and marked Exhibit "B" hereto is a full, true and correct copy of the by-laws of the complainant; and that the same may be read and considered as evidence on the trial of this cause as if it were duly and formally authenticated.

3. That J. F. Johnston will testify as follows: That he is the secretary of the Chattanooga National Building and Loan Association and occupied said position at the time the loan to defendant Denson was made, and has continuously occupied the same position up to the present time; that the loan to defendant Denson involved in this suit was negotiated by one, F. H. Kennedy, of Fort Payne, Ala., who was a traveling soliciting agent for the complainant, and whose business it was to solicit subscriptions to stock, and to submit applications for loans from complainant. The applications of defendant Denson for stock in complainant association was forwarded by said soliciting agent to the home office of complainant in Chattanooga, Tenn., and the stock was duly issued and returned to said agent to be by him delivered to defendant Denson. The original application and bid of said Denson for the loan in controversy in this cause was

24 also forwarded to complainant's home office by said Kennedy, and was submitted along with other applications to complainant's board of directors at a stated meeting of said board; and the bid offered by said Denson for said loan, being the highest that was offered for this sum of money and the amount of money desired by said Denson being in the treasury of the association and subject to loan under the provisions of its by-laws, and the security offered by said Denson in his application having been approved, said application was granted and the loan was directed to be made in accordance with the provisions of the charter and by-laws of the complain-

ant association. Thereupon, the note and deed of trust filed as exhibits to complainant's original bill in this cause were prepared at the home office of complainant association, and forwarded to the said Kennedy, through whom the application had been submitted. At the same time a check was sent by complainant association on the Chattanooga National Bank of Tennessee, in favor of defendant W. H. Denson, for the sum of $2,367.50, to D. P. Goodhue of Gadsden, Alabama, with instructions to said Goodhue to deliver said check to defendant upon the execution and delivery of said note and deed of trust. Complainant at that time had no money on deposit in any bank in the city of Gadsden or the State of Alabama, and said check was subsequently presented for payment at the Chattanooga national bank in the city of Chattanooga, Tennessee, and was paid by said bank out of funds on deposit therein belonging to complainant association. At the time this loan was made it was the custom of the complainant association, and was so provided in its by-laws, that three months' dues on the stock of the borrowing members of the association who had not been members of the association and paid dues on their stock for three months prior to the loan, should be deducted from the loan made to such borrowers; and in accordance with that custom and provision there was deducted from the amount of the loan to defendant Denson the sum of $127.50, being three months' dues and interest on the loan, on the fifty shares of stock which had theretofore been subscribed for and issued to him. In addition to this the sum of five dollars was deducted from said loan as an attorney's fee, which was paid to complainant's attorney at its home office for examining and approving the title to the property on which defendant Denson proposed to secure payment of said loan, and for preparing the papers with reference to said loan. At the time the loan to defendant Denson was made, complainant association had been for some time soliciting subscriptions to stock and receiving applications for loans in the State of Alabama, and had paid a tax or license fee required under the laws of the State of Alabama, for foreign corporations proposing to do business in that State, and defendant's officers supposed and understood that the payment of this fee or tax was the only condition with which it was necessary for them to comply in order to be entitled to do business in that State. Subsequently, however, and some months after the loan to defendant Denson was made, complainant was informed by an attorney in the State of Alabama, that the Alabama statutes required foreign corporations doing business in Alabama, to designate a local agent on whom process against the association could be served, and also a local place of business in that State. Thereupon complainant promptly designated such local agent and place of business and continued up to the second of October, 1899, to pay the license tax or fee required of non-resident corporations doing business in Alabama, and to keep a local agent and place of business in that State. Prior to the appointment of such local agent complainant had never done any business in the State of Alabama, except to solicit subscriptions to stock through traveling agents and to receive applications for

loans and, if approved, to grant the same just as was done in the case of defendant Denson. All sums loaned by complainant to citizens or residents of the State of Alabama, were paid through the Chattanooga National Bank of Chattanooga, Tennessee, in the same manner as the loan to defendant Denson was made; and all notes and deeds of trust taken by complainant for loans in Alabama, stated on their face that they were made with reference to, and were to be governed by the laws of the State of Tennessee as in the case of this loan.

The defendant Denson continued for some months to make the payments to defendant on his stock and interest on his loan required by the terms of his note, and there is filed as Exhibit "C" hereto a statement from the books of complainant association showing the dates and amounts of all such payments. Defendant Denson has failed and refused to pay the taxes accruing on the property embraced in and covered by his mortgage or deed of trust to complainant association, and complainant has paid insurance premiums to keep said property insured aggregating $45, and has paid taxes assessed against said property aggregating $223.84, and there is filed herewith as Exhibit "D" a true and correct statement showing the dates and amounts of all such payments of insurance premiums and taxes. The surrender value of the stock owned by defendant Denson in complainant association which was transferred to complainant at the time of said loan was at the time of the filing the original bill in this cause the sum of four hundred and eighty ($480) dollars, being
26 the monthly dues paid by him on said stock, not including the accrued profits thereon; but, since the filing of said bill, the complainant association has become insolvent, and a receiver has been appointed for it in the circuit court of the United States, at Chattanooga, Tennessee, and under the holdings of the supreme court of Tennessee in winding up insolvent building and loan associations, defendant Denson is not entitled to any credit on his loan for the dues paid on all of his stock, but only for that portion thereof which represents the premium bid by him for said loan. In this case one-half of the stock owned by defendant Denson represents the premium bid for his loan, and for the dues paid on this premium stock said defendant is entitled to credit on his loan, but for the dues paid on the remaining half of his stock he is not entitled to be credited on his loan but can only receive his dividends thereon along with the other stockholders of the association. A statement showing the amount for which defendant is entitled to credit on said loan on the basis of settlement between insolvent building and loan associations and borrowing members adopted by the supreme court of Tennessee, and the amount now due from said defendant on the same basis as calculated is herewith filed as Exhibit "E." In calculating the amount due from the defendant to the receiver of complainant association, he is not charged with any premium bid by him for the privilege of obtaining said loan, the supreme court of Tennessee holding that on the insolvency of a building and loan association such premiums cannot be collected, but, on the other hand, defendant is given

credit for all amounts paid by him to complainant association by way of premiums on said loan.

On the second day of October, 1899, one John G. Brown, being the holder of a large amount of paid-up stock in complainant association, filed a general creditors' and stockholders' bill against said association in the circuit court of the United States, for the southern division of the eastern district of Tennessee, under which said James F. Johnston, the secretary of said association was appointed receiver of the same, and a few days later under an ancillary bill filed by the same complainant and against said association in the circuit court of the United States, for the northern division of the northern district of Alabama, the said James F. Johnston was also appointed receiver of all the assets of said association in the State of Alabama. A true copy of the order appointing said receiver made by said Tennessee court is herewith filed as Exhibit "F," and a true copy of his order of appointment by said Alabama court is herewith filed
27 as Exhibit "G," and the defendants waive the formal authentication of said copies.

The foregoing stipulation is to be treated as if formally sworn to by said witness and is to have the same weight on the trial of this cause as if it were the deposition of the said witness Johnston, duly and formally taken.

The defendants, W. H. Denson and Rosa E. Denson agree that the above and foregoing stipulations and exhibits thereto may be used in evidence subject however to all legal exceptions as to the legality, materiality, pertinency and competency of any portion of the same.

DENSON & TANNER,
Sols. for Def'ts.

Nov. 17th, 1899.

EXHIBIT "C."

	Paid.	Int.	Dues.	Total.
May, 1895	6/10/95	12.50	30.00	42.50
June, 1895	6/10/95	12.50	30.00	42.50
July, 1895	6/10/95	12.50	30.00	42.50
Aug., 1895	9/11/95	12.50	30.00	42.50
Sep., 1895	10/15/95	12.50	30.00	42.50
Oct., 1895	11/8/95	12.50	30.00	42.50
Nov., 1895	12/10/95	12.50	30.00	42.50
Dec., 1895	1/16/96	12.50	30.00	42.50
Jan., 1896	2/3/96	12.50	30.00	42.50
Feb., 1896	3/1/96	12.50	30.00	42.50
Mar., 1896	4/14/96	12.50	30.00	42.50
Apr., 1896	5/9/96	12.50	30.00	42.50
May, 1896	7/2/96	12.50	30.00	42.50
June, 1896	8/12/96	12.50	30.00	42.50
July, 1896	8/12/96	12.50	30.00	42.50
Aug., 1896	9/21/96	12.50	30.00	42.50
		$200.00	$480.00	$680.00

EXHIBIT "D."

Sept. 25, 1895. Paid for insurance	25.00
June 22, 1897. Paid for taxes	101.19
July 17, 1897. Paid for taxes	21.20
Oct. 26, 1897. Paid for insurance	20.00
Feb. 21, 1898. Paid for taxes	101.45
	$268.84

28 EXHIBIT "E."

June 19, 1895. To cash	2500.00
June 19, 1895. By 3 mos. prem. $45, 3 mos. int. $27.50	82.50
	2417.50
Oct. 15, 1895. To int.	50.36
	2467.86
Sep. 11th, 1895. By 1 mo. prem. $15, 1 mo. int. 12.50.	
Oct. 15, 1895. By 1 mo. prem. $15, 1 mo. int. 12.50	55.00
	2412.86
Nov. 8, 1895. To int.	9.65
	2422.51
Nov. 8, 1895. By 1 mo. prem. $15, 1 mo. int. 12.50	27.50
	2395.01
Dec. 10, 1895. To int.	11.97
	2406.98
Dec. 10, 1895. By 1 mo. prem. 15.00, 1 mo. int. 12.50	27.50
	2379.48
Jan. 16, 1896. To int.	14.27
	2393.75
Jan. 16, 1896. By 1 mo. prem. 15.00, 1 mo. int. 12.50	27.50
	2366.25
Feb. 3, 1896. To int.	7.09
	2373.34
Feb. 3, 1896. By 1 mo. prem. 15.00, 1 mo. int. 12.50	27.50
	2345.84
Mar. 11, 1896. To int.	14.07
	2359.91

Mar.	11, 1896. By 1 mo. prem. 15.00, 1 mo. int. 12.50.....	27.50
		2332.41
Apr.	15, 1896. To int.	12.82
		2345.26
29 Apr.	15, 1896. By 1 mo. prem. 15.00, 1 mo. int. 12.50 ...	27.50
		2317.73
May	9, 1896. To int.	9.27
		2327.00
May	9, 1896. By 1 mo. prem. 15.00, 1 mo. int. 12.50 ...	27.50
		2299.50
July	2, 1896. To int.....	20.69
		2320.19
July	2, 1896. By 1 mo. prem. 15.00, 1 mo. int. 12.50 ...	27.50
		2292.69
Aug.	12, 1896. To int.....	15.28
		2307.97
Aug.	12, 1896. By 2 mos. prem. 30.00, 2 mos. int. 25.00..	55.00
		2252.97
Sep.	21, 1896. To int.....	14.64
		2267.61
Sep.	21, 1896. By 1 mo. prem. 15.00, 1 mo. int. 12.50 ...	27.50
		2240.11
Nov.	16, 1899. To	423.90
		$2664.01

Mr. Denson is, in addition to the above items, also entitled to share in the assets, along with the other stockholders of the association, on the basis of the $240 paid in on his stock, and the accrued profits thereon.

EXHIBIT "F."

In the Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

JOHN G. BROWN
vs.
CHATTANOOGA NATIONAL BUILDING & LOAN ASSOCIATION. } In Equity.

30 *Decree Appointing Receiver.*

This cause coming on for hearing on this the 2nd day of October, 1899, before the Hon. Chas. D. Clark, judge, etc., on the application of the complainant for the appointment of a receiver for the defendant Chattanooga National Building & Loan Association, the complainant being represented by his solicitors, Pritchard & Sizer, and the defendant by its president, J. A. Caldwell, and the said defendant having entered its appearance to the bill, and having waived service of process, and notice of this application, and having made no resistance to the same and the application having been considered and understood by the court:

It is therefore ordered, adjudged and decreed that James F. Johnston be and he is hereby appointed receiver of all the property and assets of the said Chattanooga National Building & Loan Association, wherever located; including real estate, mortgages, notes, accounts, furniture and fixtures, choses in action, and all other property, rights and franchises of every description and kind. He is hereby authorized to take immediate possession of all such property wherever situated or found, and to manage and control the same in such manner as will best preserve and protect it for the benefit of the creditors and stockholders; and he may employ such persons, and make such disbursements as may be needful and proper in so doing. The said receiver is required forthwith to make and file with the clerk of this court a bond in the penalty of ten thousand dollars with good and sufficient security, conditioned to properly perform and discharge his duties as such, and to account for and pay over all moneys coming into his hands according to the orders of court. The receiver is hereby fully authorized and empowered to institute such suits as may be necessary in his judgment for the proper protection of the property, and the collection of the assets of the defendant, and also to come in and assume the prosecution and defense of any and all suits now pending in any court in favor, of or against the said association, the prosecution or defense of which will in his judgment be necessary for the proper protection of the property placed in his charge. All officers, directors, agents and employés of the defendant, and any and all other persons and corporations are hereby required and commanded to turn over to the said receiver any and all property, books, vouchers, deeds, notes, mortgages, stock, bills, accounts, moneys, and all other property or choses

in action, belonging to the defendant association, which may
31 be in their hands or under their control, and all other persons and corporations are hereby enjoined and inhibited during the pendency of this suit from in any manner interfering with the possession, control or management by said receiver of the duties imposed on him as such. The said receiver may make application to the court from time to time for such instructions and authority as he may need or desire in the discharge of his duties, and he will make full report of his action in the premises to the next term of the court. This 2nd day of October, 1899, at 2 o'clock p. m.

(Signed) C. D. CLARK, *Judge, etc.*

EXHIBIT "G."

In the Circuit Court of the United States for the Northern District of Alabama.

JOHN G. BROWN
vs.
CHATTANOOGA NATIONAL BUILDING & LOAN ASSOCIATION. } In Equity.

This day came on to be heard, before the Hon. D. D. Shelby, judge, etc., the ancilliary bill filed by the complainant in the above-styled cause, the court having considered the same, and it appearing that the complainant in said cause has already filed in the circuit court of the United States for the southern division of the eastern district of Tennessee, an original bill, against the above-named defendant, it being a citizen of the State of Tennessee, and a resident of the southern division of the eastern district of Tennessee, and said court having jurisdiction of the complainant and defendant, and the subject-matter involved in said original bill, that in the said original bill the said complainant asked for a receiver for said defendant, for the purpose of protecting its assets and property, and sought to wind up the defendant as an insolvent corporation, and distribute its assets among its stockholders and creditors, and it further appearing in said original cause in said circuit court of the United States for the southern division of the eastern district of Tennessee, the Hon. Chas. D. Clark, judge of the eastern district of Tennessee, and presiding in said circuit court made an order and decree on the 2nd day of October, 1899, granting and sustaining the complainant's application for the appointment of a receiver, and appointing James F. Johnston as receiver of
32 the property of the Chattanooga National Building & Loan Association as fully appears from his order, a certified copy of which is attached to the original bill herein, and it further appearing from said bill that it was the purpose of said court to provide for the preservation and protection of all the property and assets of the defendant, and the said James F. Johnston having duly qualified as receiver under said original bill and having given bond as required in the order appointing him:

It is ordered, adjudged and decreed, that said ancilliary bill be

filed in this court and that this court take ancillary jurisdiction with the said circuit court of the United States, for the southern division of the eastern district of Tennessee, of the cause therein pending, wherein John G. Brown is complainant, and the said Chattanooga Building & Loan Association is defendant, and that the said order of the said Chas. D. Clark, judge, etc., granting the application of the said complainant for the appointment of a receiver, and appointing James F. Johnston as receiver of the defendant, be and the same is hereby ratified and confirmed, and is made the order and decree of this court, and the said James F. Johnston is hereby vested with the same powers, rights and privileges conferred upon him in and by the order and decree of the Hon. Chas. D. Clark, aforesaid, over that portion of the assets and property of the defendant which lies within this district, and within the jurisdiction of this court; and said receiver is hereby authorized to take possession of said property in this district and to act as receiver upon the execution by him of a bond in good security, to be approved by the clerk of this court, in the penalty of ten thousand dollars.

It is further ordered and decreed that all other creditors, stockholders and members of said Chattanooga National Building & Loan Association and all other persons and corporations be enjoined and inhibited from in any manner interfering with the management, possession, and control of any of the property of the defendant within the jurisdiction of this court.

The complainant will cause to be filed in this court certified copies of all orders of a general nature in any way affecting the said property situated within the jurisdiction of this court, which may be made in said original cause by the circuit court of the United States, for the southern division of the eastern district of Tennessee.

This 3rd day of October, 1899.

(Signed) D. D. SHELBY, *Judge, etc.*

33 *Direct and Cross Examination of William H. Denson.*

CHATTANOOGA NATIONAL BUILDING & LOAN Association
vs.
WILLIAM H. DENSON ET AL. } No. 109. In Equity.

Comes WILLIAM H. DENSON, and the complainant named in the interrogatories and in the commission also, and the complainant demanding that the witness be examined orally under rule 67 of the rules of equity practice in the United States courts, and the witness being sworn to speak the truth, the whole truth, and nothing but the truth, deposes and says:

Q. Are you the defendant in this suit?
A. I am.
Q. What relation exists between the defendants in this suit?
A. William H. and Rosa Denson are husband and wife

Q. Did you ever borrow any money from the complainant in this suit?

A. I did borrow money from the association, complainant in this suit.

Q. How much did you make application to borrow?

A. I made application to borrow $2500.

Q. How much cash did you actually receive on said loan?

A. I only received in actual cash $2372.50 on this loan.

Q. Why did you not receive the whole amount you proposed to borrow?

A. The reason given me by the said association for not paying over to me $2500 was that they took out $127.50 for interest as monthly payments, $12.50 per month on $2500 for the months of May, June and July, 1895, making the interest for the three months to be $37.50, also $30.00 per month as monthly payments, making an aggregate for the months of May, June and July, 1895, $90.00.

Q. Have you written evidence of the process of borrowing the money?

A. I have a copy of the instrument which the association calls the written application.

Q. From whom did you procure the said written application?

A. I procured this copy from the association, I made objection to the soliciting agent of the said association, at the time that I signed the said written application, that I was not a stockholder in the association, and the association sent me this copy of said instrument, which is called an application to borrow money.

By Mr. SIZER:

Q. Attach the said written instrument to your deposition, and notify it as "Exhibit A."

By Mr. DENSON: I attach the said copy of the said instru-
34 ment as it was furnished me by the complainant association to my deposition and notify it as "Exhibit A."

Q. Have you done it?

A. I have attached the said written instrument marked for identification as "Exhibit A."

Q. Where did the said negotiation commence?

A. It commenced in my office in Gadsden, Etowah county, Ala.

Q. Where did it continue, where did it consummate?

A. It continued in said office in said city of Gadsden, and was consummated in said office in said city of Gadsden, and nowhere else.

Q. Where did you sign, execute and deliver the original of the said written instrument?

A. I signed and executed the original of "Exhibit A" to this deposition in my office in Gadsden, Etowah Co., Alabama, and delivered the same to the soliciting agent of the complainant association, with whom I had the transaction, in my office in the said city of Gadsden.

Q. On what day did you sign and deliver the said original?

A. I signed and delivered the said original on the 25th day of April, 1895.

Q. Did any part of the negotiation occur in any other State than Alabama?

A. No part of the negotiations occurred in any other State than Alabama, as before stated.

Q. State fully the circumstances under which, and the purposes that induced you to execute said instrument?

A. The circumstances under which I executed the said original were as follows: A gentleman, whose name I cannot now recollect came into my office in Gadsden, and represented himself to be the soliciting agent for the complainant in this cause. He said that he understood that I was desirous of borrowing money. I informed him that such was my desire. He said the complainant would lend to me at six per cent. per annum, with seven years within which to pay it, with twice the value in a real-estate mortgage to secure it. Which real estate should be appraised by two disinterested persons to be selected by the association. I accepted the terms; nothing had been said as to my becoming a stockholder in the complainant association. Said person then presented the original of "Exhibit A" to this deposition. I at once called his attention to the recital in said instrument which stated that I owned fifty shares of the stock on which I desired the loan of $2500. I stated to him that I did not own such stock, did not desire to purchase any stock, and had no money to make such investment; that I wanted to borrow money.

Q. What was the subject-matter, and what the purposes of your making such application?

35 A. The subject-matter of the said application was a loan of money to me by the complainant association, and my borrowing money from it.

Q. If you answer that you executed said instrument on the 25th day of April, 1895, had you ever been prior to that day a stockholder in complainant association?

A. I signed and executed said original instrument a copy of which is Exhibit A to this deposition, on the 25th day of April, 1895. I was not on that day a stockholder in said association, and I had never been prior to that day such stockholder.

Q. Was any share of stock in said association ever issued to you, or to any one for your benefit?

A. If any share of stock in said association was ever issued in my name, or to any one for my use and benefit, I never heard of such issuance, and do not know that there was.

Q. Did you ever have in your possession, or under your control a single or any number of shares of stock in said association?

A. I have no recollection that I ever had in my possession, or under my control a single share or any number of shares of stock in said association.

Q. Did you ever contract with said association to purchase any shares of its stock?

A. I never contracted with the said association to purchase any

share or shares of its stock. If any contract was ever made, the force and effect of which was to make me a stockholder in such association, I was not cognizant of, nor understood that such contract would make me a stockholder, or result in my purchase of a share or shares of stock in such association.

Q. State if you ever attended a meeting of stockholders of said association?

A. I never attended a meeting of the stockholders of the said association.

Q. Were you ever notified of the time or place of meeting of stockholders for the said association?

A. I was never notified of the time or place of any meeting of stockholders of the association.

Q. Were you ever advised, consulted or requested to participate in any meeting in any relation, in any matter in which the said association was concerned or involved?

A. I was never advised, consulted or requested to participate in any meeting or in any relation in any meeting or in any relation in any matter in which said complainant association was concerned or involved.

Q. Were you ever informed or consulted, or did you ever participate in any meeting or conversation which had for its object the consideration of its affairs, or the conduct of the said associa-
36 tion, or election of its officers, or for the consideration of any matter pertaining to the said association?

A. I was never informed or consulted about, or participated in any meeting or conversation that had for its object or purposes the condition or management of the business affairs or conduct of the said association, or the election of any of its officers, or condition in any matter pertaining to said association.

Q. Did you ever participate in the profits earned by said association?

A. I have never participated in the profits earned by the business of the association.

Q. Did you ever receive any dividends as a stockholder or for any purpose in said association?

(A.) I have never received any dividends as a stockholder, or for no other purpose, and in no capacity.

Q. Did you ever have any interview with said association, or did you ever have a communication or communications with the complainant as to the making of the application for the loan of said money in Chattanooga, or in any other place or part in or of the State of Tennessee?

A. I never had any interview with said association, nor held any communication or communications with it, or any of its agents or representatives as to the making the application for the loan of said money in the city of Chattanooga, at any other place or part of the State of Tennessee.

Q. State where all communication or communications commenced, continued and consummated in regard to your making the said application to borrow the said money, and the execution of the said

note (Exhibit A to the original bill) and the execution of the mortgage (a copy of which is attached to the original bill as Exhibit B)?

A. The communication or communications in regard to my making said application to borrow said money from said association each were commenced, continued and consummated in Gadsden, Etowah county, Alabama, and in no other place, and the same is true as to the signing, executing and delivering of the said note which is attached as "Exhibit A" to the original bill, in this case, and the execution of the said mortgage, the original or a copy of which is attached as "Exhibit B" to the original bill.

Q. State where each one of the original instruments were signed, executed, acknowledged and delivered, and by whom they were delivered?

A. Each one of the original instruments, namely, the two original applications were made on the 25th of April, 1895, and the note attached as Exhibit "A" to the original bill, and the original
37 mortgage attached as Exhibit "B," to the original bill, the said note and mortgage being executed on the 10th day of June, 1895, were each signed, executed, acknowledged and delivered to the said soliciting agent of the complainant association, by me in my office, in Gadsden, Etowah county, Alabama.

Q. Were either of them delivered in Chattanooga, Tenn., or in any other place in Tennessee?

A. Neither of said instruments was delivered by me to said association complainant in the city of Chattanooga, Tenn., or any other place in the State of Tennessee.

Q. Was any one of the said instruments signed, executed, acknowledged or delivered in any other place than Gadsden, Alabama?

A. Neither one of the said instruments was signed, executed, acknowledged or delivered in any other place by me, or by any one for me, than at Gadsden, Alabama. I delivered each one of the said instruments to the said soliciting agent of the complainant association, in said city of Gadsden.

Q. Where is the land situated that is embraced in the description in the said mortgage, a copy of which is attached as "Exhibit B" to the original bill?

A. The land described and embraced in the said mortgage, the original, or a copy of which is attached as Exhibit "B" in the original bill, is situated in the city of Gadsden, Etowah county, Alabama.

Q. Are you acquainted with the notary public who took the acknowledgment of the said mortgage?

A. I am acquainted with John C. Pugh, Esq., the notary public who took the acknowledgment of my wife and myself of the said mortgage.

Q. How long have you known him?

A. I have known him from his birth, thirty-two years ago.

Q. Where did he reside at the time he took the acknowledgment?

A. At the time he took the acknowledgment he resided in Gadsden, Etowah county, Alabama.

Q. Under what authority was he executing the authority of a notary public?

A. He was exercising his authority as a notary public at that time under the laws of the State of Alabama.

Q. How do you know this?

A. I know this from having seen and read his commission, as such notary public, long before he took the acknowledgment, and I know that at time he had been acting as such notary public for several years, and was recognized, and considered and employed as such by the general public to perform the duties of such notary public.

Q. Where did you reside at the time of the signing, executing, acknowledging and delivering *to* each and all of the original instruments mentioned in the original bill, and in this deposition and in the interrogatories?

38 A. At the time the defendants to the original bill signed, executed, and acknowledged and delivered each and all of the original instruments mentioned in the original bill, and this deposition and interrogatories, they resided at Gadsden, Alabama.

Q. How long had they resided there?

A. They had resided there prior to that time for about eighteen years.

Q. Where was the money you borrowed in that transaction paid to and received by you?

A. The money borrowed by me in the said transaction was paid to, and received by me in Gadsden, Etowah county, Alabama.

Q. How much money was paid to and received by you in the said transaction?

A. The actual sum paid to and received by me in the said transaction was $2367.50.

Q. Who paid you such money?

A. W. G. Brockway, cashier of the First National Bank of Gadsden, paid the sum of money to me.

Q. State fully the manner and circumstances, and how much money, was paid to and received by you?

A. When I delivered to the soliciting agent of the association the note and mortgage mentioned in the bill and made an exhibit thereto, as "A" and "B," and also mentioned in these interrogatories and deposition, the said soliciting agent of the said association, in my office, in Gadsden, Etowah county, Alabama, delivered to me the check for $2367.50. My best recollection now is, the check was drawn on the First National Bank of Gadsden. I presented the check at the counter of the said bank, and received this amount of money on it.

Q. When and where was the said check delivered to you, and who delivered it?

A. The said soliciting agent of the before-mentioned complainant association delivered to me the said check. It was in my office in Gadsden, Etowah county, Alabama, that the check was delivered to me, in the said office.

Q. Do you know where the said check is?

A. I do not know where the said check is.

Q. Is the check in your possession, or under your control?

A. It is not in my possession, or under my control.

Q. When did you last see the said check?

A. The last time I saw the said check was when I presented it at the counter of the said First National Bank of Gadsden, to be cashed. The said cashier paid me the said cash on the said check, and took it. I have not seen the said check since.

Q. If you have ever paid any money on the said loan, please state where you made such payments, and to whom you made such payments?

A. I made several payments on the said loan, I made each payment to David P. Goodhue, who was the agent of the said
39 association at Gadsden to receive such payments. I made two payments to J. W. Du Bose, who received the payments for Mr. Goodhue, and I made each payment in the city of Gadsden.

Q. How many payments did you make to him, and during what period of time did you make the said payments?

A. Barring three payments which the association took out, to wit: $42.50, for each of the months of May, June and July, 1895, which three payments aggregate $127.50, I have made thirteen other and different payments, of $42.50 each per month, embracing August, 1895, and each other month, to and including August, 1896. These thirteen payments aggregate $552.50 and, including the payments made for the months of May, June and July, 1895, I have paid the association on the said loan $689.

Q. Who was present when you made the said payments to represent the said association?

A. Mr. Goodhue was present, to whom I made the said payments, and he informed me that he was the agent of the association to receive the said payments; I know the association never made any complaint or objection to Mr. Goodhue receiving the said payments, a majority of the payments being made monthly to Goodhue, and the said association informed me more than one time that Mr. Goodhue was its agent for this purpose.

The complainant objects by its solicitor, who comes to say:

"Which of the foregoing statements by the alleged agent of the said association as to his authority to represent and act for it."

Q. Where did he reside at the time of the said payments being made to him, and how long had he resided there prior to such time?

A. Mr. Goodhue resided in Gadsden aforesaid at the time of the said payments being made to him, and he had resided there for twelve or fifteen years.

Q. Where does he reside now?

A. He resides there now.

Q. Did you ever make any payments of the said transaction at Chattanooga, Tenn., or any other place than at Gadsden, Ala.?

A. I never made any payments on the said transaction at Chattanooga, Tenn., or at any other place than at Gadsden, Alabama.

Q. At the time you signed and delivered the said note (Exhibit

"A" to the original bill), and at the time you signed and executed and acknowledged and delivered the said mortgage, the original, or a copy of which is Exhibit "B" to the original bill, did you have in your possession or under your control, any share of stock in the said association?

40 A. At the time I executed and delivered the said note, and at the time that I executed, acknowledged and delivered the mortgage, the original or a copy of which is attached to the original bill, and identified as Exhibit "B," I did not have in my possession or under my control any share or shares of stock in the said association, for the use or benefit of myself or any person whatever.

Q. Have you, at any time before or since the said time, had any share or shares of stock of the said association in your possession or under your control, or subject to your disposal; or did you ever see a share or shares of stock in said association, or have you ever had such in your possession or under your control, or subject to your disposal?

A. I never had at any time, before or since the execution of said mortgage in my possession or under my control, or subject to my disposal any share or shares of stock in the said complainant association; and I have never had at any time or anywhere, seen a share or shares of stock in said association, only at the time when I signed the assignment or surrender of said stock to said association, which is on the back of said certificate of stock.

Q. State for what purpose you borrowed the money?

A. I borrowed it to pay my debts.

Q. Did you borrow it to secure you a home; or did you borrow it to build you a dwelling-house and improve real estate, that you might secure a home for yourself and family?

A. I did not borrow it to secure a home, I did not borrow it to build a dwelling-house, nor to improve real estate, or that I might secure a home for myself and family.

Q. State the character of the improvements on the property mentioned in and described in the mortgage?

A. On the lot on which the dwelling-house is situated there is a two-storied residence containing eight rooms, the four front rooms are 18 x 20 feet each, in area, with a hall between, downstairs; and these four rooms constitute the two-storied part of the house; the other rooms, three of them are 16 x 16 feet in area, one 14 x 16 feet, and are the four back rooms before mentioned, there is a seven-foot veranda to the four front rooms, up and down stairs; there are two verandas to the other four rooms, one running on the side of the single-storied rooms, the veranda in the rear of the said four rooms being built in the shape of an L to the two front two-storied rooms. Over this last veranda there is a platform five feet wide, well covered to connect the kitchen with the rooms in the said house, there is also a bath-room at the west end of this last-named veranda. There is also a two-storied barn on the lot, as well as a carriage-house, all under the same roof; there is also a servants' house, which

41 embraces two rooms with a chimney between, and a porch in front. The whole lot, which embraces an acre and a third

is paled in, and there are palings between the front yard and the back, and between the back yard and the garden. There is water communication with faucets on the premises connected with the house and kitchen. The other lots mentioned in the mortgage are two lots fronting one hundred and twelve feet on Third avenue, and Eleventh street in the city of Gadsden, which are not improved. The other lots six in number front on Forest avenue, and are one hundred and fifty feet, running back a depth of one hundred and seventy-five feet, three of the lots reaching to and adjoining the aforesaid other three lots, which front one hundred and fifty feet on Third avenue, and running back one hundred and twenty-five feet to said three lots fronting on Forest avenue, and ending in the rear of one of the lots which faces Forest avenue, constituting the six lots which are enclosed and improved, without embracing the garden, stables, and some other outhouses and also the lawn in the rear of the yard. Mr. Hertzberg, my son-in-law, uses these six lots as indicated above to live on.

Q. What is a fair and reasonable valuation of said property?

A. A fair and reasonable valuation of said property is six thousand dollars, no less.

Q. Is the said property deteriorating in value?

A. The said property is not deteriorating in value, but is appreciating in value.

Q. How much property did you own at the time you borrowed the said money, and what was its character and value?

A. At the time I borrowed the said money from the said association, property not included in the mortgage, I owned about twenty-five hundred acres of land, this land is mineral land, and is situated in Etowah and De Kalb counties, Alabama, some of the said mineral land is good for agricultural purposes, and a fair valuation of the property at the time I borrowed the said money was $25,000.00.

Q. Do you own said property now?

A. I do own the property at this time. The said mineral lands in De Kalb county, amounting to about 2200 acres, were sold for taxes in 1897, the sale being void under the statute enacted by the last legislature of Alabama, and the statutes of the State under that law of the legislature pronounced the sale void, and the title is still in me, the sale being made by the officers of De Kalb county without giving me any notice whatever of the same, or stating in the said order the year the said taxes were assessed for which the lands were sold to pay.

42 The real estate, including two hundred and forty or two hundred and eighty acres, known as the Brashear place, three hundred and sixty acres lying by and in Will's valley, each in Etowah county, Alabama, fifty-five lots in the town of Attalla, Ala., and the property mentioned. I am as solvent in every respect as a gold dollar, and am willing and able to pay my just debts, and will do so. I have always been known as a debt-paying man, and have property and earning capacity to pay all of my debts.

Q. State if the value of the property embraced in the mortgage was appraised before the association would lend you the money?

A. The value of the property was appraised before the association would lend me the money.

Q. At whose instance was the appraisement made, who appointed the appraisers, to whom did the appraisers make the report of their appraisement; who were the appraisers, where did they reside, and where do they now reside?

A. The appraisement was made at the instance of the association, the association appointed the appraisers so far as I know; I know I never made any appointment myself; they made the report of their appraisement to the association. The soliciting agent of the association and the appraisers themselves, W. L. Echols and T. B. Guinn, informed me that they were the appraisers to appraise the said property; they resided in Gadsden at that time and they reside there now.

Q. How long have they resided at the said place?

A. Of my own knowledge, I know that Echols has resided in Gadsden for twenty-three years, he told me that he was born there, and had been living there for fifty years; Guinn has lived in Gadsden to the best of my recollection for about fifteen years.

Q. What was the value of the said property by the said appraisement?

A. My information is, that they placed the value of said property at five thousand ($5000.00) dollars by their appraisement. The appraisers gave me this information, and so did the said soliciting agent of the association; I have never seen the said valuation in writing.

Q. Where is the report of said appraisement now?

A. I do not know where said appraisement is now.

Q. Has the monthly payments of interest for each month decreased, and has the alleged loan of twenty-five hundred ($2500.00) dollars been decreased by the payments which you have made on the said transaction?

A. I state that the monthly payments of interest to be twelve dollars and fifty cents ($12.50) monthly, and continuing to forty-two dollars and fifty cents ($42.50), up to the time I ceased to make payments on the alleged amount; the aforesaid amount of twenty-
43 five hundred ($2500.00) dollars was not decreased a particle up to the time mentioned. From further statements made to me by the association, in their insistence that I should pay them the said amount, I state that the alleged amount of twenty-five hundred dollars cash loan has not been decreased.

Q. Did you know of any other transaction done or consummated in Gadsden, Etowah county, Alabama, by the association complainant, similar to that consummated with the defendant in this suit?

The solicitor for the complainant waived the answer, and an agreement was entered into as to the residue of the direct examination of Mr. Denson, which agreement was as follows:

Agreement.

It is agreed by the solicitors for the complainant *that* the defendant in this case that the complainant association made three other different and separate loans than the one involved in this suit made to W. H. Denson, in the city of Gadsden, Etowah county, Ala., and on property lying and being in the city of Gadsden, Etowah county, Ala., under the same circumstances and conditions and manner and mode that the said association made the loan involved in this case, and the transaction in this case with the said W. H. Denson. That one of the said loans was made on the 16th day of May, 1895, one on the 30th day of May, 1895, one on the 1st day of June, 1895, and the one to W. H. Denson, involved in this suit was made on the 10th day of June, 1895.

Witnessed by N. W. Trimble.

Cross-examination.

By J. B. SIZER, solicitor for the complainant:

Q. You stated on examination-in-chief that you received the sum of twenty-three hundred seventy-two dollars and fifty cents ($2372.50) on this loan. I will now ask you if it is not a fact that five dollars of this amount was by your instructions and with your consent paid to an attorney at the home office of the association for preparing the papers relative to your loan?

A. My recollection is that there was five dollars reserved out by the association for their home attorney for preparing the papers at Chattanooga.

Q. Is it not a further fact that you were paid the sum of twenty-three hundred and sixty-seven dollars and fifty cents ($2367.50) by a check on the Chattanooga Building and Loan Association on the Chattanooga national bank on this loan?

44 A. I stated that my memory has been refreshed as to the five dollars attorneys' fee in this matter, and it should be added to the one hundred and twenty-seven dollars and fifty cents ($127.50), which I stated in my direct examination was taken out of the twenty-five hundred dollars for the purpose therein stated, which would make the amount of actual cash received on the alleged twenty-five hundred dollars twenty-three hundred and sixty-seven dollars and fifty cents. My mind is not clear as to whether this check was on the First National Bank of Chattanooga, Tenn., or the First National Bank of Gadsden, Ala. I took the check that the soliciting agent of the association told me to present to the First National Bank of Gadsden, Ala., and that I would receive the money on it, and I did so present the said check to the First National Bank of Gadsden, Ala., and William G. Brockway, cashier of the First National Bank of Gadsden, Ala., paid to me twenty-three hundred and sixty-seven dollars and fifty cents ($2467.50) over the counter of the First National Bank of Gadsden, Ala., in the city of Gadsden, Etowah county, Alabama.

Q. Look at the check herewith handed you, and state if it is the check which you received on this loan?

A. Mr. Sizer, presenting me with a check, I recognize it as a check that was delivered to me in my office at Gadsden, Ala., by the aforesaid soliciting agent of the complainant association, and he directed me to present this same check to the First National Bank of Gadsden, Ala., and that the said bank would cash it. I did so present it, and William G. Brockway, the aforesaid cashier of the First National Bank of Gadsden, Alabama, who paid me twenty-three hundred and sixty-seven dollars and fifty cents ($2467 50) over the counter of the said First national bank, in the city of Gadsden, Alabama, the said Brockway took the check from me, and I have never seen it since until today, when it is presented to me by Mr. Sizer.

Mr. SIZER: Please file this check as Exhibit No. "1" to this deposition.

Mr. DENSON: I file it as Exhibit No. "1" to my deposition.

Q. You now see that you were mistaken when you stated on your examination-in-chief that this money was paid to you by a check on the First National Bank of Gadsden, Alabama, do you not?

A. I state that I was mistaken, and that the mistake occurred by the lapse of time, and by the said soliciting agent directing me to present it at the First National Bank of Gadsden, Alabama, for payment.

45 Q. I will now ask you to look at that check, and see if it does not appear by the indorsement on the back of it and by the stamp put by the bank on the face of it that it was forwarded to Chattanooga for collection by the First National Bank of Gadsden, and that it was paid in Chattanooga by the Chattanooga national bank?

A. In answer to this question, I state that I am myself positive that the said soliciting agent of the said complainant association delivered this check to me at my office in Gadsden, Ala., and under his instructions I carried it directly to the First National Bank, of Gadsden, Ala., and the money was there paid to me by William G. Brockway, cashier of the said bank, over the counter of the said national bank, and I told him that the instructions of the said soliciting agent were to present this check at that bank, and I got this identical check then and there cashed, and the said check was not sent by me, or by my authority or for my use or benefit to the First National Bank of Chattanooga, or any other bank for collection. I had no interest whatever in the check after the money was paid me on it.

Q. You knew from the face of the check that it was drawn on the bank in Chattanooga, and that you should have presented it at that bank for payment, did you not?

A. I knew no such thing, because I was instructed by the soliciting agent of complainant to present this identical check to the First National Bank of Gadsden and that the said National Bank of Gads-

den would pay me cash on the check, and this is the reason I presented the check at said bank.

Q. You knew that the check was drawn on the Chattanooga bank, did you not?

A. I did not know it at that time. I do not recollect ever reading the check until this morning, in fact I believed that until it was delivered to me this morning, and I have never read the check, I did not know otherwise but that it was drawn on the First National Bank of Gadsden, Alabama.

Q. If you had read the check at that time, or if you have ever read it, you knew that it was drawn on the Chattanooga bank, did you not?

A. As the question is argumentative, I will answer it argumentatively. Being a graduate of a university, I can read and understand the English language either in printing or writing, and I believe that if I had read the check I would have seen that fact, but I have no recollection of reading it, and do not believe that I had read it, for I have always believed that the check was drawn on the First National Bank of Gadsden, until I saw it in this office this morning and I presented the said check at said Gadsden bank under the instructions from said soliciting agent to be cashed, and as it
46 was cashed without any inquiry, and immediately upon presentation, I had no occasion to examine the check closely.

Q. Now with reference to the one hundred and twenty-seven dollars and fifty cents ($127.50) that was retained out of the twenty-five hundred dollars as interest, for three months on the loan of stock, this money was retained with your knowledge and consent, was it not?

A. ——.

Mr. Ullman, the attorney for defendant, objects, on the ground that no testimony has been offered here showing that the defendant owned, held or controlled any share or shares of stock in the complainant association, and the question is formed with reference to a loan on stock.

A. I state that I never dreamed of any such retention, or heard tell of it until when I went to get the money from Brockway on the check, as I was instructed by the said soliciting agent, and returned immediately to my office where the said soliciting agent was, and asked him why I did not get twenty-five hundred dollars, and he then and there told me it was retained out of the twenty-five hundred dollars for the purpose hereinbefore stated in my direct examination.

Q. When the local agent explained the matter to you, you accepted the twenty-three hundred sixty-seven dollars and fifty cents without protest, did you not?

(A.) In answer to this I will say: I accepted the check, but called the attention of the soliciting agent that I was not a stockholder in said association, and did not intend to become one, I called his attention to it then and there, and denounced it as a great wrong, that I had never been informed, of nor anticipated such a thing. He said "You cannot keep that money unless you consent to this" and

I, in order to get the money said nothing more, but I kept it with a powerful mental reservation of the great wrong by forcing this upon me by what is here stated, that I could not get the money without consenting to it.

Q. Is your recollection very clear on the point that you never made any application for stock in the complainant association?

A. I have no recollection of ever having made any written application whatever and certainly not a verbal application for stock in such association at any time; my best recollection is, that on the day, or somewhere near it, that the said soliciting agent when he handed me this written application for the loan of money on the 25th day of April, 1895, handed me a paper in regard to applying for the stock in the association, but whether I signed it or not, I do not know.

47 Q. Look at the paper herewith handed you, and file it as "Exhibit 2" to your deposition, and state if your signature is appended thereto?

A. I have examined the paper, which I designate as Exhibit No. "2," and my signature in my own handwriting is appended to that paper and bears date the same day, April 25th, 1895, that the said written application, and the same conversation and discussion occurred about this paper as did about the written application for the loan of the money.

Q. Is it not a fact that previous to this application there was issued to you fifty shares of stock in the complainant association?

A. I state in answer to this that if ever any such stock was issued to me, previous to said application, I did not know of it; I never had any information in regard to it, and I never saw such stock, and no such stock was ever delivered to me, nor did I ever have such stock in my possession or under my control.

Q. When the association granted your application for a loan, did you, or not, contract to transfer by written indorsement on the certificate of stock for fifty shares, the application for which has been shown to you, to the complainant association?

A. I do not know positively, my recollection is that I transferred or surrendered some kind of a paper to the said association in relation to the stock, but whether it was a certificate or shares of stock, I cannot remember, as I stated, I have no recollection of having in my possession or under my control any share or shares of stock in said association.

Q. Look at the paper herewith handed you, and file it as Exhibit No. 3 to this deposition, and state if it is not signed by you?

A. The signature to the paper is mine, I wrote the signature myself, and identify the paper, and file it as Exhibit No. "3," to this deposition, this is the paper mentioned in my answer to the said original bill, in which answer I state now that the said paper was the paper surrendered or transferred to the complainant association, the fact that the certificate is printed on the back of the stock had escaped my recollection. I thought it was a separate paper.

Q. Then you were mistaken in the statement made by you in

your examination-in-chief that you had never seen any certificate of stock in the complainant association?

A. Yes, knowing that I had signed the paper mentioned in my answer as surrendering the assignment of stock and not knowing at the time that the assignment was on the back of the stock. I now state that my name, W. H. Denson, is signed on the said cer-
48 tificate by the side of the word "assignee" which is an error, it should have been signed on the blank line above and to the right of the word "assignee" as it appeared on the said assignment.

Q. Look at the paper herewith handed you, and file it as Exhibit No. 4 to your deposition, and state if it is not the application that you made to the complainant association for the loan now in controversy, and state if it is not signed by you?

A. As before stated this is undoubtedly the paper to which I have heretofore referred in my direct examinations as the written application to borrow the said money, and I identify it, and file it as Exhibit No. 4 to my deposition.

Q. You signed the note filed as exhibit to the original bill in this case, did you not?

A. I did, and so stated in my answer to the original bill. In that answer, I admitted the execution of that note.

Q. After you had signed the application filed as Exhibit No. 4 to this deposition, you delivered it to the local agent of the association and he informed you that it would have to be sent to Chattanooga to be approved by the association?

A. I do not know, I have no recollection of any such occurrence.

Q. Do you not recollect that you delivered the application to the local agent?

A. I do, the soliciting agent brought this paper, (Exhibit No. 4) into my office, just as it appears now, with the exception of my signature, he handed it to me, and then occurred my protest, that I was not a stockholder of the company, was not buying stock, had no money to invest in such stock, that I was borrowing money. He said that this was a commercial company, and that I would have to sign that paper with my full Christian name, William H. Denson, I laid it down on my desk and signed.

Q. Now, Mr. Denson, do you not remember that this agent told you, and was it not the understanding from what he had told you before that this application had to be forwarded to Chattanooga, to the association to be approved there by them, before the loan would be made?

A. I have no recollection of that statement by the said agent. He may have stated that or he may not. I do not know.

Q. What is your profession, and how long have you followed it?

A. I am a lawyer by profession, and have been engaged in it for 29 years the first day of October, 1899, and the most vexed question from a legal standpoint that has ever concerned me, is the idea of a man lending another money, and it turns out that he becomes a stockholder in the company, and is expected to pay for shares
49 that he never intended to buy, had no money to buy, did not want and did not care to own.

Q. Have you not been a member of the House of Representatives of the United States?

A. Yes, I was.

Q. For how long, and for how many terms?

(A.) The Fifty-third Congress, two terms.

Q. You stated on your direct examination that you had never received any of the earnings or profits of the complainant association, did you not?

A. Yes.

Q. Now, is it not a fact, that your share of the profits were credited to you on your stock, in the association, and on its books?

A. If any such credits were made, I know nothing of it; I read something in the bill that is filed, but that is the first time I ever heard of it.

Counsel for defendant objects, on the ground that the books kept by the complainant association are not evidence against this defendant, and on the further ground that the other fact appearing there puts in evidence facts sought to be elicited from these interrogatories elsewhere.

Q. I will ask you if it is not a fact that some time before this case was filed you proposed to pay the amount of money borrowed from the complainant association, and the association wrote you accepting your proposition, on the consideration that the settlement was made within thirty days, and that you never replied to their acceptance to your proposition, or made any effort to carry it out?

Counsel for the defendant objects, on the ground that the six hundred dollars was offered as a compromise of this litigation, and was not carried into effect, and that the same is immaterial, and cannot be used as evidence against this defendant.

A. I cannot recollect the terms of any compromise that was proposed; there was some proposal of compromise made afterwards. The complainant association declined to make any compromise.

Q. The money borrowed by you from the complainant association was used to pay off incumbrances on the property covered by the deed of trust on the property now in controversy, and the other debts you owed?

A. Undoubtedly the money was used to pay off my debts.

Q. Is it not a fact that you have failed to keep the insur-
50 ance and taxes on the property paid up, as you contracted to do in the deed of trust which is filed as Exhibit B to the original bill in this suit?

A. I kept the insurance up, until Brother Johnson here, the secretary, began to pout about the expense, and I thought if he could run it cheaper, let him do it. As to the taxes, they were well secured by the property. When I went to pay the taxes the tax collector told me the property had been sold; I looked on the probate judge's record and found it. I went to the judge's offices and found that one Gordon had bought in the property for the complainant association. I knew then that the taxes had been well secured by the

property, and that no injury could result to them by any insurance or taxes, I propose to redeem the property within the next three months.

Q. The reason this property was sold for its taxes was because you had failed to pay the taxes within the time required by law, was it not?

A. If it had not been for the reason stated in that question, the courts of Alabama would have no power to order a sale.

Q. You have, as a matter of fact, paid no taxes on this property since you contracted the debt with the association, have you?

A. Yes; I have paid the taxes during that time.

Q. You have been perfectly solvent, and could have paid these taxes if you had chosen to do so, could you not?

A. I could, unquestionably.

Q. You covenanted in your deed of trust that you would keep up the taxes and insurance costs on the property while this loan was in force, did you not?

A. In answer to this question, I would respectfully ask counsel why he should propound the said inquiry when he has the contract right before him, and is looking at it.

Q. I will ask you to file as Exhibit 5 to this deposition the pass book or receipt book given you by the association, in which is entered the payments made by you on the account of this loan?

A. I will if I can find it. I had such a book, and I desire to use it as evidence myself.

(Signed) W. H. DENSON.

End of examination.

Sworn to and subscribed before me, this 1st day of November, 1899.

N. W. TRIMBLE, *Examiner.*

NOTE.—It was agreed before the examination commenced by the solicitors for the complainant and the defendant and Miss Nora Davis, that the payment for her labor as stenographer was approved by both parties. That by consent of both, her fees are to be paid as part of the court costs.

51	Taking deposition.....	5.00	
	Typewriting the same.....	10.08	
			15.08
Examiner's fees			15.00

I, N. W. Trimble, examiner, duly appointed by said circuit court, hereby certify that the above is the deposition of Wm. H. Denson, in the above-entitled cause, duly taken after due and legal notice, signed in presence of the examiner, and duly sworn to, that counsel for the complainant and the defendant were present at said examination, that Miss Nora Davis, as stenographer and typewriter was duly approved by both parties, and that I am not interested in said suit, or a kin to either party to said suit.

N. W. TRIMBLE, *Examiner.*

The Exhibits Nos. 1, 2, 3 and 4, hereto attached are the original exhibits used on examination, and noted by me.

N. W. TRIMBLE, *Examiner.*

EXHIBIT No. 1.

The Chattanooga National Building & Loan Association.

Loan fund. No. 2040.

CHATTANOOGA, TENN., *June 12th*, 1895.

Pay to the order of W. H. Denson, $2367.50. Twenty-three hundred sixty-seven & 50/100 dollars.

(N. B. C.) J. F. JOHNSTON, *Secretary.*

To the Chattanooga national bank, Chattanooga, Tenn.

Indorsed on left end, on face: Approved by J. A. Caldwell, president.

Stamped on face: "Chattanooga national bank, paid June 21, 1895. Chattanooga, Tenn., exchange department."

Indorsed on back: "W. H. Denson." Stamped on back: "For collection and credit for account of First national bank, Gadsden, Ala., W. G. Brockway, cashier."

Indorsed: "Exhibit No. 1 to deposition of W. H. Denson. N. W. T., examiner."

EXHIBIT No. 2.

No. 1683. Series 44. Chattanooga National Building & Loan Association. Application for stock. Notice, agents are allowed to collect the first month's dues only of sixty cents per share.
52 All other payments must be made to the treasurer of our local boards, or sent direct to the home office. Agents have no authority to make any promises regarding loans, or to bind the association to pay any debts.

I hereby apply to the Chattanooga National Building & Loan Association of Chattanooga, Tenn., for 50 shares of stock. My full name is William H. Denson, and my post-office address is (street and No.) Gadsden, county of Etowah, State of Alabama. My occupation is attorney. My age ——. I will pay my dues at Gadsden branch association.

I hereby agree to abide by the by-laws, rules and regulations of the Chattanooga National Building & Loan Association, and hereby appoint the general attorney of said association to be my proxy, and to vote in my stead upon all shares of stock held by me, or standing in my name, during my absence at any and all meetings. William H. Denson, applicant. This application was taken by me, and the first month's dues were paid to me. —— ——, agent. Dated at —— State of —— this 25th day of April, 1895.

(Indorsed:) Exhibit No. 2 to deposition of W. H. Denson, N. W. T., exam'r.

EXHIBIT No. 3.

Incorporated under the laws of the State of Tennessee.

Number 1683. Series No. 44. (Vignette.) Shares, 50. Amount, $5000.00.

The Chattanooga National Building & Loan Association, of Chattanooga, Tennessee.

This certifies that W. H. Denson, of Gadsden, county of Etowah, State of Alabama, is a member of the Chattanooga National Building and Loan Association, of Chattanooga, Tennessee, and has subscribed for and is the owner of fifty shares of stock therein, payments thereon are due on the last Saturday of each month, beginning on the 25th day of May, A. D. 1895. This certificate is issued to, and is accepted by the holder hereof, upon the conditions named upon the back of this certificate, and the by-laws of the association, which are hereby made a part hereof.

Given under the seal of the Chattanooga National Building
53 & Loan Association, at Chattanooga, Tennessee, this 23rd day of May, A. D. 1895.

[SEAL.]

J. A. CALDWELL, *President.*
J. F. JOHNSTON, *Secretary.*

Shares $100 each.

Conditions Referred to in the Body of This Certificate.

First. The shareholder agrees to pay to this association sixty cents monthly for each share until such share matures, or is withdrawn.

Second. Monthly payments must be paid each month on or before the day of the month stated in within certificate. Payments shall be made at the home office, provided, however, that members in any town may elect a local treasurer and may make payments to him for transmission to the home office. In such cases the local treasurer will be the agent of the members, and not of the association.

Third. Fifty cents of each monthly payment on each share and all fines shall go to the loan fund, the remainder of such payment and all fees shall go into the expense or general fund. No part of the loan fund or interest or profit thereon can be used for expenses of any kind, except for taxes.

Fourth. If any monthly payments are not paid when due, a fine of five cents per share shall be imposed for each month (each or any) payments may be in arrears.

Fifth. Stock in this association is non-forfeitable, but if a monthly payment on any share becomes past due for a period of six months or more such share shall be cancelled. After all arrears and fines are paid the balance due on stock, if any, shall be paid to the owner thereof.

Sixth. Shares in good standing may be transferred on payment to the association of a transfer fee of one dollar. Shares on which loans have been made can be transferred only to a purchaser of the mortgaged property. No transfer is good unless made on the books of the association.

Seventh. At any time this certificate may be returned and a new certificate for a less number of shares issued in lieu thereof. In such case the money paid hereon, except one dollar withdrawal fee for each share so withdrawn, shall be applied to the new certificate, and no more payments shall be required until such money is exhausted.

Eighth. Shareholders may suspend payment (upon the surrender of this certificate), for a period not to exceed six months, and
54 have a new certificate of a later series issued, thus preventing the accumulation of dues and fines. This does not apply to shares of stock borrowed on.

Ninth. If a member dies, his personal representative may withdraw his shares at any time. In no other case can a share be withdrawn until after three months from the date of certificate. If a share is withdrawn at any time before it matures, the member will be entitled to receive a sum of money equal to the amount paid on such shares in monthly payments (less a withdrawal fee of one dollar per share) together with a dividend on such payments at the rate of six per cent. per annum, if withdrawn before two years, and eight per cent. per annum if withdrawn after two years and before four years, and ten per cent. per annum if withdrawn after four years, and before maturity. If a share is matured it may be withdrawn at any time, and the holder thereof will be entitled to receive $100 therefor, together with all additional profits which may have been apportioned to such share. A member desiring to withdraw his share shall be required to give the association thirty days' notice of such intended withdrawal. Unless the consent of the directors is obtained, the association cannot be required to use in payment of withdrawing members in any one month more than one-half as much money as is received into the loan fund during that month.

Tenth. On the first day of January, April, July and October, in each year, the profits arising from interest, premiums, fines and other sources, shall be apportioned among, and set to the credit of all the shares in good standing. Whenever the monthly payments made on any share together with the profits apportioned, and set to the credit of such share, amounts to $100, such share shall be deemed to have matured, and no more monthly payments thereon shall be required. The directors may require any share to be withdrawn at any time after it has matured. If any losses occur they shall be deducted from the undivided profits as far as possible. Any deficiency may be charged against the share in force.

Eleventh. No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature.

Assignment.

If you want to sell your stock, fill out this blank, and send this certificate with the transfer fee to the home office.

For value received, I hereby sell, assign, transfer and set over all my right, title and interest in and to the shares of stock mentioned in the within certificate to Chattanooga Nat. B. & L. Association, of Chattanooga, county of Hamilton, State of Tennessee.

(Signed) ——.

Witness:
J. C. PUGH.

Dated this 10 day of June, 1895.

I accept the within shares of stock, and accept and agree to the terms and conditions of the within certificate.

W. H. DENSON, *Assignee.*

N. B.—This certificate of shares must be sent to the secretary with the transfer fee thereof for approval of assignment. Chattanooga, Tenn., —— —, ——. The above assignment is entered upon the books of this association and approved this date. —— ——, secretary.

Endorsed on margin of assignment: "Shareholder No. 1683. Your monthly payment on this certificate amounts to $30.00, which must be paid on or before the last Saturday of each month. Members may make payments in advance."

Withdrawal Receipt.

The within-mentioned shares of stock in the Chattanooga National Building and Loan Association are hereby surrendered, and I hereby acknowledge the receipt of the sum of —— dollars, amount due me by reason of such withdrawal. Dated, —— —, 189–. Witness —— ——, —— —— shareholder. Be sure and notify the home office of any change in your post-office address.

Endorsed on margin of withdrawal receipt: "In writing to the home office be sure to give the number of your certificate."

(Indorsed:) Exhibit No. "3" to deposition of W. H. Denson, N. W. T. exam'r.

EXHIBIT No. "4."

N. B.—Return your certificate of stock with this application.

To the president and board of directors of the Chattanooga National Building and Loan Association, of Chattanooga, Tennessee:

I, Wm. H. Denson, have 50 shares of stock in certificate No. ——, in series No. ——, on which I desire a loan of $2500 cash, and I

offer a premium of $2500, and propose to secure said loan
56 and premium by my mortgage or deed of trust for $5000, upon the following-described real estate situated in the city of Gadsden, county of Etowah, and State of Alabama, to wit: (Here insert a correct description of the land offered as security, copying the same in full from your deed.)

One house and lot in the city of Gadsden, now occupied by me and my family as a home. Situated and fronting on Forest avenue, one hundred and fifty feet, and running back to Chestnut street and fronting on that street one hundred and fifty feet, containing one and one-third acres. There is an alley on the east side the whole length of the lot, it is between the lots of W. G. Bellinger on the west, and W. R. Dortch on the east. The value of this house and lot in these stringent times is six thousand dollars.

Three lots on Forest avenue, commencing at the corner of Tenth street and Forrest avenue, and run west one hundred and fifty feet, along Forrest avenue, then run south one hundred and seventy-five feet, thence east one hundred and fifty feet to Tenth street, thence along Tenth street to beginning point. Three lots commencing at the corner of Tenth street, and Third avenue, and run west one hundred and fifty feet, thence north one hundred and twenty-five feet, thence east one hundred and fifty feet, to Tenth street, thence south along Tenth street to beginning point, being the same conveyed to —— —— by —— —— on the — day of ——, 189–, by deed of record in the —— office of —— county, State of ——, in Book —, page —.

(1.) For what purpose is the money wanted? To remove encumbrances and pay debts. (2.) Of what material is the house built? Wood; foundation, brick; size of main building, 30 feet by 18; height, 2 stories; additions or L's material, ——; size 46 feet by 32; height, one. (3.) How many rooms in the house? Eight and hall and eight closets and bath-room. (4.) When was the house built? In 1883. (5.) Is the house completed? Yes. (6.) If not, when will it be? Recently repaired and in good condition. Is the house painted? Yes. (8.) If not completed, do you guarantee to build it as described above? ——. (9.) What other improvements are there on the premises? Good barn and stables. What is the value of the land exclusive of improvements? Home place, $3000. The other lands mentioned, $3,000.00. The value of the buildings? 3000. (12.) What will the proposed improvements cost? ——. (13.) What will be the total value of the property when proposed improvements are completed? ——. (14.) Is it encumbered by
mortgages or liens or in any other way? Mortgage on home
57 place. (15.) If so, to whom and in what amount? $1500. (16.) How much assurance will you assign? $3000. In whose name is the legal title? Wm. H. Denson. (18.) Are you married? Yes. (19.) Give your wife's (or husband's) name in full. Rosa E. Denson. Will you pay the attorney for investigating the title, and recording fees of deed of trust and other necessary documents? Yes. (21.) What is your post-office address? Gadsden.

(22.) Do you guarantee the answers to the above questions to be true? Yes. Dated this 25th day of April, 1895.

WILLIAM H. DENSON, *Applicant.*

Committee's Report.

(23.) Were you duly authorized by your local board to make this appraisement?

(24.) Have you personally inspected the property above described? Yes.

(25.) What is the land worth exclusive of improvements? $5000.

(26.) What is the value of the buildings thereon? $3000.

(27.) What will the proposed improvements cost?

(28.) What will be the total value when the proposed improvements are completed?

(29.) If the house is not built, have you talked with the builder, and ascertained that the house proposed is to be of the character and value stated by the applicant?

(30.) Do you consider this a good safe loan? Yes.

(31.) What is the occupation of the applicant? Attorney.

We, the undersigned committee, hereby certify that the answers to all of the above questions are true.

T. W. ECHOLS.
T. B. GWIN.

Local Board Report.

The report of the committee as shown above, is accepted by the board of directors of the — branch, and the loan is recommended. The character of the applicant is —. The security is deemed sufficient and safe. This report is ordered to be spread upon our minutes, by order of the board.

—— ——, *President.*

—— ——, *Secretary.*

Attorney's Report.

STATE OF ALABAMA, }
Etowah County. }

58 I hereby certify that I have examined the records of said county, and find the title to the property offered by W. H. Denson as security for loan to be perfect, and vested in W. H. Denson, in fee-simple, with the following exceptions: The judgment of one thousand dollars in favor of Gadsden Land and Improvement Company will have to be paid before the deeds to lots mentioned in abstract is made.

I find that there are no taxes due and unpaid, and no mortgages, trust deeds or liens of any kind against said property except $48 City taxes and mortgage on home place for $1,500 in favor of Thos. Cantrell, said mortgage is not recorded. Denson says there is about

six months' interest due on mortgage. Dated at Gadsden, this 10th day of May, 1895.

GOODHUE & SIBERT,
Local Attorneys.

(Indorsed:) Application No. —. Name, W. H. Denson. P. O., Gadsden. State, ——. Amount cash, $2500. Amount premium, $2500. Total loan, $5000. Certificate No. —. Series No. —. Filed this — day of ——, 189–

(Indorsed:) Exhibit No. "4" to deposition of W. H. Denson. N. W. T. ex'm'r.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

CHATTANOOGA NATIONAL BUILDING AND Loan Association
vs.
W. H. DENSON ET AL.
} No. 109. In Equity.

Affidavit of W. G. Brockway.

Personally came before me, N. L. Green, a notary public, in and for Etowah county, Alabama, William G. Brockway, who being by me duly sworn deposes and says that he is, and has been since the organization, and is now the cashier of the First National Bank of Gadsden, and was such cashier during the whole of the year 1895. That on the 12th day of June, 1895, as such cashier he paid over the counter of said bank in the city of Gadsden, Etowah county, Alabama, the sum of twenty-three hundred and sixty-seven 50/100 dollars to W. H. Denson, on a check drawn by the Chattanooga National B. and L. Association, on a Chattanooga national bank, and in favor of W. H. Denson. My best recollection is, that I paid the money on this check under an understanding with the said
59 building and loan association, and that the Chattanooga national bank on which the check was drawn would pay the same on presentation. After said payment by me, I transmitted the check to our Chattanooga correspondent, and the same was paid. The stamp "For collection, &c.," was not placed there as indicating that said check was to be collected from said Chattanooga bank on account of W. H. Denson, but the money was paid to said Denson as on any other negotiable exchange.

W. G. BROCKWAY.

Sworn to and subscribed before me, this 11th November, 1899.
[OFFICIAL SEAL.]
N. L. GREEN,
Notary Public.

Indorsed: Evidence agreed on by Mr. Sizer.
(Indorsed:) Chattanooga National Building and Loan Association vs. W. H. Denson, *et als.* Affidavit of W. G. Brockway.

Certificate of Secretary of State.

STATE OF TENNESSEE, }
Hamilton County. }

Know all men by these presents, that the Chattanooga National Building and Loan Association, a corporation duly organized under the laws of the State of Tennessee, with its principal place of business in the city of Chattanooga, in said State of Tennessee, do hereby designate the city of Montgomery as its known place of business in the State of Alabama, and does hereby designate and appoint W. B. Davidson as its authorized agent at said place.

Witness the signature of J. A. Caldwell its president, and J. F. Johnston, its secretary, and the corporate seal of said association, this the 7th day of October, 1895.

[SEAL.] J. A. CALDWELL, *President.*
J. F. JOHNSTON, *Secretary.*

STATE OF ALABAMA, }
Office Secretary of State. }

I, Robert P. McDavid, secretary of state of Alabama, hereby certify that the above is a true and correct copy of instrument filed in this office by the Chattanooga National Building and Loan Association, on the 10th day of October, 1895, as the same appears on file and of record in this office.

And I do further certify that the above instrument appears
60 from the records of this office to have been the first and only appointment of an agent by the said corporation under the act of February 28th, 1887.

In testimony whereof I have hereunto set my hand, and affixed the great seal of the State on this 30th day of August, 1899.

[GREAT SEAL.] ROB'T P. McDAVID,
Sect. of State.

(Indorsed:) Certificate of the secretary of state.

Note of the Submission of Defendants for Final Decree.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

CHATTANOOGA NATIONAL BUILDING AND Loan Association
vs.
W. H. DENSON ET AL. } No. 109. In Equity.

September Term, 1900.

Come the respondents, W. H. Denson and Rosa E. Denson, and submit the above-entitled cause for final decree; upon the joint and separate answer of said defendants to the bill; upon the depositions of W. H. Denson; upon an agreement contained in said depositions;

that the complainant had three other transactions similar to that with the respondents to this suit, in the city of Gadsden, and in the same way, and under similar circumstances as that had with said W. H. Denson, and had such transactions in the months of May and June, 1895; upon the affidavit of W. G. Brockway which affidavit is accepted and agreed by the respective counsel, shall be used as evidence in the case. Upon the certified copy of the appointment of an agent, etc., as required by the constitution and statutes of Alabama, by the complainant in this case on the 7th of October, 1895, with the certificate of Rob't P. McDavid under the great seal of the State.

DENSON & TANNER,
Counsel for Respondents.

Filed in office this 12th day of September, 1900.

(Indorsed:) Chattanooga Nat. B. & L. Ass'n *vs.* W. H. Denson, *et al.* Note of the submission of the respondents. Filed in open court this 12th day of September, 1900. Chas. J. Allison, clerk.

61 *Decree.*

CHATTANOOGA NAT'L B. & L. ASSOCIATION
vs.
W. H. DENSON and Wife, ROSA E. DENSON. } No. 109. In Equity.

This cause came on to be heard before the Hon. Chas. Swayne, judge, etc., on the pleadings, proof, stipulations and agreements of parties and the entire record in the cause; from all of which the court is of the opinion, and so adjudges and decrees, that complainant is entitled to the relief sought in and by its bill.

And it appearing that on the 25th day of April, 1895, defendant, William H. Denson, made applications in writing to complainant for a loan of $2500 on fifty shares of stock held by him in complainant association, and offered a premium of $2500 for the privilege of obtaining said loan, and in the event the application should be granted, further offered to secure the payment of said loan and premium by a mortgage and deed of trust on the real estate to be hereinafter described; that said application, having been forwarded to complainant's board of directors at Chattanooga, Tenn., was there by said board approved and granted; that thereafter, to wit: on the 10th day of June, 1895, complainant forwarded to its traveling soliciting agent at Gadsden, Alabama, its check for $2367.50 in favor of defendant, Wm. H. Denson, being the $2500 which complainant had agreed to loan him as aforesaid, less the sum of $127.50, being three months due on said Denson's stock at the rate of $30 per month, and three months' interest on the $2500 loaned said Denson, at the rate of $12.50 per month, which complainant deducted from the amount advanced him in accordance with its custom and the provisions of its by-laws; that at the same time that it forwarded said check complainant also forwarded the note and deed of trust filed as Exhibit "A" and "B" respectively, to the orig-

inal bill in this cause, which were prepared by complainant's attorney at Chattanooga, Tenn., and on the execution of which the said check was to be delivered to said Denson; that said Denson duly signed said note and together with his wife the defendant Rosa E. Denson, executed and acknowledged said mortgage or deed of trust, which was duly recorded in Etowah county, Alabama, wherein the real estate mentioned and conveyed therein was located; that upon the execution of said note and mortgage said check was delivered to defendant Denson, who endorsed it to the First National Bank at Gadsden, Alabama, which subsequently forwarded it to Chat-
62 tanooga, Tennessee, and there received payment thereof from the Chattanooga national bank, on which it was drawn; and that complainant had no money on deposit in any bank in the State of Alabama at the time of said transaction; the facts are all so adjudged.

And it further appearing that defendant Denson made payments by way of interest and premium on said loan on the dates and in the amounts following, to wit:

Sept. 11, 1895	$27.50
Oct. 15, 1895	27.50
Nov. 8, 1895	27.50
Dec. 10, 1895	27.50
Jan. 16, 1896	27.50
Feb. 3, 1896	27.50
March 11, 1896	27.50
April 15, 1896	27.50
May 9, 1896	27.50
July 2, 1896	27.50
Aug. 12, 1896	55.00
Sept. 21, 1896	27.50

And that on each of the respective dates aforesaid said defendant also made payments by way of dues on his stock to the amount of $15 except the stock payment made on August 12, 1896, which was $30, making the total payments made by the defendant by way of dues on stock, the sum of $195, and that the payments aforesaid, together with the $127.50 deducted at the time the loan was made, constitute all payments made by said Denson; the facts are so adjudged.

It further appearing that since the filing of the bill in this cause, the complainant association has been declared insolvent and a receiver appointed for it, under a general creditors' and stockholders' bill filed against it on the second day of October, 1899, in the circuit court of the United States for the southern division of the eastern district of Tennessee, by one John G. Brown, a stockholder in said association; and that an ancillary bill has also been filed by the same complainant and an ancillary receiver appointed for said association in the circuit court of the United States for the northern division of the northern district of Alabama; the court is of the opinion, and so adjudges and decrees, that defendant Denson is entitled to credit on his loan for all payments made by him by way of

interest and premium, as hereinbefore set forth, but not for
63 the aforesaid payments made by him as dues on his stock;
but that, as to such stock payments, the said Denson stands in the same attitude as non-borrowing stockholders, and is entitled to share with them in the assets of the association, on the basis of the amount paid by him.

The court further adjudges and decrees that complainant has paid in insurance premiums on the property covered by the mortgage given it by defendant to secure said loan, the sum of $25 on Sept. 25th, 1895, and the sum of $20 on October 26th, 1898; and that it paid city taxes on said property on July 17, 1898, $21.20, and on January 23, 1899, $16.60; for all which amounts, with interest from the respective dates of payment, the court is of the opinion, and so decrees, that under the terms of said mortgage complainant is entitled to a lien on the property therein conveyed, and to payment out of the proceeds of sale.

The court further adjudges and decrees that after giving defendant Denson the credits to which he is entitled as hereinbefore adjudged, and charging him with the taxes and insurance premiums paid by complainant as adjudged, there is due and unpaid on the note sued on in the bill, with interest at six per cent. per annum on the amount of money actually advanced defendant thereon from the date of the loan to the date of this decree, the sum of ($2,841.15) two thousand, eight hundred and forty-one and 15/100 dollars.

And it further appearing that in his note and deed of trust aforesaid, defendant stipulated and agreed that in the event of default in the performance by him of the stipulations of his contract, and a foreclosure of said mortgage on account thereof, he would pay a reasonable attorney's fee for the collection of the amount due on said note; and that defendant has made default and is liable for such reasonable attorney's fee; and the court being of the opinion that ($200.00) two hundred dollars would be a reasonable fee to complainant's solicitors for their services in collecting the amount due on said note; it is therefore decreed that complainant recover said sum of ($200.00) to be paid out of the proceeds arising from the foreclosure of said mortgage, in addition to the principal and interest due on said loan.

It is further adjudged and decreed that complainant is entitled to a foreclosure of the mortgage or deed of trust given by defendants Denson and wife, to secure payment of said indebtedness; and unless defendants shall, within 90 days from the entry of this decree, pay into the registry of the court a sum sufficient to pay and satisfy the amounts due on said indebtedness as hereinbefore adjudged, together with interest thereon to the date of payment and all
64 the costs of this cause, C. J. Allison who is hereby appointed special master for the purpose of making said sale, will, after publication of notice once a week for at least four weeks prior to the sale, in at least one newspaper printed regularly, issued and having a general circulation in the county and State wherein the real estate proposed to be sold is located, to wit: in Etowah county, Alabama, which notice shall describe the real estate to be sold, and shall state

the time, place and terms of sale, offer for sale and sell at public outcry in front of the door of the court-house, of Etowah county, Alabama, to the highest and best bidder, on the terms mentioned and provided in said mortgage, to wit: for cash in hand and in bar of the equities of redemption and of homestead and dower, the real estate conveyed in and by said mortgage, which is described as follows:

Being the lot on which W. H. Denson now resides and described as lot No. four (4) according to Pope's map of the city of Gadsden; said lot fronts one hundred and fifty feet (150) on Forest Ave., and extends back of uniform width a distance of about three hundred and twenty-five feet (325) to Chestnut St.; said lot is bounded on the west by W. C. Bellinger's lot, and on the east by W. R. Dortch's lot. Also three lots on Forest Ave., commencing at the corner of Tenth St. and Forest Ave., and running west one hundred and fifty (150) feet along Forest Ave., then runs south one hundred and seventy-five (175) feet; thence east one hundred and fifty (150) feet to Tenth St.; thence along with Tenth St., to the beginning point.

Also two lots commencing at the corner of Eleventh St. and Third Ave., and running along west with said avenue one hundred and twelve and one-half (112½) feet; thence north to Dr. Thornton two garden paling; thence one hundred and twelve and one-half (112½) feet to Eleventh St.; thence south along with said Eleventh St. to the beginning point.

In the event such sale is made, the said special master will forthwith report to the court in writing his action in the premises, to the end that such further orders and decrees may be made thereon as to the court may seem proper. Done in open court this sixth day of October, 1900.

CHAS. SWAYNE, *Judge.*

(Indorsed:) Filed Oct. 6th, 1900. Chas. J. Allison, clerk.

65 *Petition for Allowance of Appeal.*

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama, Sitting in Equity, at Birmingham, Ala.

CHATTANOOGA NATIONAL BUILDING & LOAN Association, a Corporation, *vs.* WILLIAM H. DENSON and ROSA E. DENSON. } No. 109. In Equity.

To the Hon. Charles Swayne, United States district judge, northern district of Florida, presiding in said court:

The defendants in the above-entitled cause, conceiving themselves aggrieved by the order and decree made and entered in the above-entitled cause on the 6th day of October, 1900, wherein and whereby it was ordered, adjudged and decreed that defendant W. H. Denson was due the defendant at the date of said decree, the sum of two

thousand eight hundred and forty-one 15/100 dollars on a note executed by said Denson to complainant and to collect which said bill was filed, and that the complainant is entitled to a foreclosure of the mortgage or deed of trust executed by said Denson and his wife, R. E. Denson and co-respondent to complainant, and which is attached to the original bill, and identified as Exhibit "B" thereto, to secure the payment of said indebtedness, and unless defendant shall within — days from the entry of this decree, pay into the registry of this court a sum sufficient to pay and satisfy the amounts due on said indebtedness, as hereinbefore adjudged to be due, together with interest thereon to the date of payment and all costs of this cause, then the special master named in said decree after advertising the sale of said real estate described in said mortgage or deed of trust and in said decree once a week for four weeks, shall proceed to sell said real estate for cash in hand, and in bar of the equity of redemption and of homestead or dower, to pay said amounts so adjudged and decreed to be due. And said special master upon making said sale will forthwith report to the court in writing his action in the premises, to the end that such further orders and decrees may be made thereon as to the court may seem proper, do hereby appeal from said order and decree of the sixth of October, 1900, to the United States circuit court of appeals for the fifth circuit, for the reasons specified in the assignment of errors filed herein, and prays that this appeal may be allowed, and that a transcript of the
66 record, papers and proceedings upon which said order and decree was made, duly authenticated may be sent to the United States circuit court of appeals for the fifth circuit.

That an order may be made fixing the amount of bond or security which defendants or either of them shall give and furnish upon such appeal, and that upon giving such security all further proceedings in this court be suspended and stayed until the determination of said appeal by the said United States circuit court of appeals for the fifth circuit.

And your petitioners will ever pray, etc.

WILLIAM H. DENSON,
Solicitor for Respondents.

Dated Oct. 6th, 1900.

(Indorsed:) Chattanooga National Building & Loan Association vs. W. H. Denson, *et al.* Petition for allowance of appeal. Filed Oct. 6th, 1900. Chas. J. Allison, clerk.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

CHATTANOOGA NATIONAL BUILDING & LOAN Association, a Corporation,
vs.
WILLIAM H. DENSON and ROSA E. DENSON. } No. 109. In Equity.

Come now the respondents in the above-entitled cause and file the following assignment of errors, upon which they and each of them

will rely in the prosecution of their and each of their appeal from the decree made by this honorable court on the 6th day of October, 1900, in the above-entitled cause:

I.

The court erred in pronouncing the decree, because the proof showed affirmatively, and without contradiction that the complainant in making the loan and securing the same by said note and mortgage did an act of business in the State of Alabama, without having complied with the constitution and statutes of Alabama, prescribing the conditions under which a foreign corporation can do business in Alabama.

67

II.

The court erred in pronouncing the decree because the proof showed affirmatively and without contradiction that the loan of the money and securing the same by note and mortgage were invalid and void under the constitution and statutes of Alabama, and could not in law or equity be a foundation on which to either maintain this action or upon which the court could pronounce a decree in favor of the complainant.

III.

The court erred in decreeing the loan of the money, the note given therefor, and the mortgage executed and given to secure said notes were each a legal, valid and binding transaction.

IV.

The court erred in decreeing the loan of money was a legal, valid and binding transaction.

V.

The court erred in decreeing the execution of the note was a legal, valid and binding transaction.

VI.

The court erred in decreeing that the execution of the mortgage was a legal, valid and binding transaction.

VII.

The court erred in decreeing the loan of the money, the note given therefor and the mortgage executed and given to secure the payment of said note, were not acts of business done or performed in the State of Alabama by the complainant, a foreign corporation.

VIII.

The court erred in decreeing that the loan of the money was not an act of business done or performed in the State of Alabama, by the complainant, a foreign corporation.

IX.

The court erred in decreeing that the execution of the note was not an act of business *did* or performed in the State of Alabama, by the complainant, a foreign corporation.

X.

The court erred in decreeing that the execution of the mortgage was not an act of business — or performed in the State of Alabama, by the complainant, a foreign corporation.

68 XI.

The court erred in not decreeing the loan of the money and execution of the note and mortgage were illegal and void transactions.

XII.

The court erred in not decreeing that the loan of the money was an illegal and void transaction.

XIII.

The court erred in not decreeing that the execution of the note was an illegal, invalid and void transaction.

XIV.

The court erred in not decreeing that the execution of the mortgage was an illegal, invalid and void transaction.

XV.

The court erred in adjudging and decreeing that said defendants or either of them were due anything on said note or indebtedness.

XVI.

The court erred in decreeing a foreclosure of said mortgage and ordering a sale of said lands to pay said amount so adjudged and decreed to be due on said note or indebtedness.

XVII.

The court erred in pronouncing the final decree in favor of the complainant and decreeing costs against the defendants.

XIX.

The court erred in decreeing a bar of equity of redemption of defendants or either of them in said land upon a sale thereof.

XX.

The court erred in decreeing a bar of the homestead of defendant or either of them in said lands on a sale thereof.

XXI.

The court erred in decreeing a bar of the right of dower of the defendant Rosa E. Denson, in said lands on a sale thereof.

In order that the foregoing assignments of error may be and appear of record the defendant presents the same to the court, and prays that such disposition may be made thereof as in accord-
69 ance with law, and the statutes of the United States in such case made and provided.

All of which is respectfully submitted.

W. H. DENSON,
Solicitors for the Defendants.

Dated Oct. 6th, 1900.

(Indorsed:) Chattanooga National Building & Loan Association *vs.* W. H. Denson *et al.* Assignment of errors. Filed Oct. 6th, 1900. Chas. J. Allison, clerk.

Order of the Court Granting Appeal and Fixing Amount of Supersedeas Bond.

In the Circuit Court of the United States for the Fifth Judicial Circuit in and for the Southern Division of the Northern District of Alabama, at a Regular Term Thereof Held at the Court-room, in the City of Birmingham, on the Sixth Day of October, 1900.

Present: The Honorable Chas. Swayne, United States district judge for the northern district of Florida, sitting in equity.

CHATTANOOGA NATIONAL BUILDING & LOAN ASSOCIATION, a Corporation,
vs.
WILLIAM H. DENSON and ROSA E. DENSON.

The defendants in the above-entitled cause, having filed in this court their petition for allowance of appeal, together with their and each of their assignments of error, within due time, and also praying that an order be made fixing the security which the defendants should give and furnish upon said appeal, and that upon giving such security all further proceedings of this court be suspended and stayed until the determination of said appeal by said United States circuit court of appeals in and for the fifth judicial circuit:

Now, it is ordered that an appeal to the United States circuit court of appeals, for the fifth circuit, from the final decree heretofore filed and entered herein be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits,
70 stipulations, agreements affidavits and all proceedings herein . be forthwith transmitted to the said United States circuit court of appeals.

It is further ordered, that the bond on appeal be fixed at one thousand dollars. That upon the said defendants William H. Denson and Rosa E. Denson, or either of them filing with the clerk

of this court a good and sufficient bond in the sum of one thousand dollars within ninety days from this date to be approved by the clerk of this court, and to the effect that if the said defendants William H. Denson and Rose E. Denson and the plaintiffs in error, or either of them shall prosecute said appeal to effect and answer all damages and costs if they fail to make their appeal good, then the said obligation to be void, else to remain in full force and effect, then all further proceedings in this court, and all further proceedings on said final decree be, and they are hereby suspended and stayed until the determination of said appeal by said United States circuit court of appeals.

Dated this 6th day of October, 1900.

CHAS. SWAYNE,
District Judge.

(Indorsed:) Chattanooga National Building & Loan Association vs. W. H. Denson *et als.* Order of the court granting appeal, and fixing supersedeas bond. Filed Oct. 6th, 1900. Chas. J. Allison, clerk.

Appeal and Supersedeas Bond.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

CHATTANOOGA NATIONAL BUILDING & LOAN ASSOCIATION
vs.
WILLIAM H. DENSON and ROSA E. DENSON.

Know all men by these present, that we, William H. Denson and Rosa E. Denson, as principals, and the United States Fidelity and Guaranty Company of Baltimore, Md., are held and firmly bound unto the Chattanooga National Building and Loan Association in the sum of one thousand dollars, to be paid to the said Chattanooga National Building and Loan Association, its attorneys or assigns, to which payment, well and truly to be made, we bind ourselves and our heirs, executors administrators and successors jointly and severally firmly by these presents.

71 Sealed with our seals and dated this 18th day of October, 1900.

Whereas, lately at a session of the circuit court of the United States for the southern division of the northern district of Alabama, in a suit pending in said court between Chattanooga National Building and Loan Association, complainant, and William H. Denson, and Rosa E. Denson, respondents, a decree was rendered against said respondents, and they, the said respondents, William H. Denson, and Rosa E. Denson, having obtained from said court an order allowing an appeal to the United States circuit court of appeals, for the fifth judicial circuit to reverse the decree of the aforesaid suit, and also an order fixing the appeal bond at the sum of one thousand dollars, with surety, to be approved by the clerk of said court, to

the effect that if the said respondents William H. Denson and Rosa E. Denson or either of them shall prosecute said appeal to effect, and pay all damage and costs if they fail to make their appeal good, then all further proceedings in this court, and all further proceedings on said final decree, be and they are hereby suspended and stayed until the determination of said appeal by the said United States circuit court of appeals, and a citation directed to the said Chattanooga National Building & Loan Association is about to be issued, admonishing and citing the said association to be and appear at the United States circuit court of appeals for the fifth judicial circuit to be holden at New Orleans, Louisiana,

Now, therefore, the condition of the above obligation is such that if the said William H. Denson and Rosa E. Denson shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue. And each of us waives all exemptions of property from the payment of debts allowed either of us under the laws of Alabama, to secure the payment of this bond.

W. H. DENSON. [SEAL.]
R. E. DENSON [SEAL.]

(5c. U. S. int. rev. stamp cancelled.)

[Seal of Fidelity & Guaranty Co.]

THE UNITED STATES FIDELITY & GUARANTY CO.,
By LOUIS V. CLARK, *Agent, and* [SEAL.]
By WM. M. WALKER, *Att'y.*

Sufficiency of surety on the foregoing bond approved this the 19th day of October, 1900.

CHAS. J. ALLISON, *Clerk.*

72 (Indorsed:) Chattanooga National Building & Loan Association *vs.* W. H. Denson, *et al.* Appeal and supersedeas bond. Filed in office this 19th day of October, 1900. Chas. J. Allison, clerk.

Citation.

UNITED STATES OF AMERICA:

The President of the United States to the Chattanooga National Building & Loan Association, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fifth judicial circuit, to be holden at New Orleans, La.,

Pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern division of the northern district of Alabama, wherein William H. Denson and Rosa E. Denson are plaintiffs in error, and you are defendant in error, to show

cause, if any there be, why the decree rendered against the said plaintiffs in error as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 18th day of October, in the year of our Lord one thousand nine hundred.

CHAS. J. ALLISON,
Clerk U. S. Circuit Court, Southern Division,
Northern District of Ala.

We hereby acknowledge service of the within citation, this October 20th, 1900.

(Signed) PRITCHARD & SIZER,
Solicitors for Complainant.

(Indorsed:) William H. Denson, Rosa E. Denson, *vs.* Chattanooga National Building & Loan Association. Citation.

73 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Northern District of Alabama, Southern Division.

I, Chas. J. Allison, clerk of the circuit court of the United States for the southern division of the northern district of Alabama, do hereby certify that the foregoing pages Nos. 1 to 109, inclusive (in manuscript) contain a true, correct and complete transcript of all the pleadings, proceedings and judgment appealed from, in the case of Chattanooga National Building & Loan Association *vs.* William H. Denson and Rosa E. Denson, being No. 109, in equity, in said court, as fully as the same remains on file and of record in my office.

Given under my hand and the seal of said circuit court, at Birmingham, Alabama, in said division and district, this — day of November, A. D. 1900.

[SEAL.] CHAS. J. ALLISON,
Clerk U. S. Circuit Court, Southern Division,
Northern District Alabama.

74 In the United States Circuit Court of Appeals for the Fifth Circuit.

CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION, Appellee,
versus
WILLIAM H. DENSON and Wife, ROSA E. DENSON, Appellants.

In this cause it is stipulated and agreed that the citation of appeal in this cause, having been issued by the clerk of the court and signed by said clerk, the same may be taken and accepted as though issued and signed by the judge of said court, in accordance with the statutes and rules of practice.

It is further agreed that a return day may be inserted in said citation of appeal fixing such return day at 30 days after the signing of said citation.

It is further agreed that the bond for appeal given in this cause, having been approved and taken by the clerk of the court, the same may be taken and considered by the court of appeals as though the same had been taken and approved by the trial judge, and the same shall be considered as in all respects a valid and binding bond.

This agreement is made for the purpose of curing any defects in the signing or issuing of the citation of appeal in this cause, and curing any defect in said citation with reference to the return day thereof, and for the purpose of curing any defect in the approval of the appeal bond given in this cause, and — save the necessity of procuring a proper citation signed by the judge, with return day inserted therein, and a new bond approved by the trial judge.

Given under our hands and seals this the 13th day of November, 1900.

PRITCHARD & SIZER,
Attorneys for Appellee.
W. H. DENSON,
Attorney for Appellants.

75 In the United States Circuit Court of Appeals for the Fifth Circuit.

CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION
versus
WM. H. DENSON and WIFE.

In this cause it is stipulated and agreed that the complainant is a corporation chartered and organized under and in accordance with the public statutes of the State of Tennessee, authorizing the creation of corporations for carrying on the business of building and loan associations; that its principal office and place of business is, and was at the time the loan involved in this case was made, and has ever since continuously been, in the city of Chattanooga, State of Tennessee; and that the loan to defendant, Wm. H. Denson, involved in this case was made in accordance with the power and authority conferred on complainant by its charter, and in the manner prescribed by its by-laws.

It is further stipulated and agreed that the charter and by-laws of complainant need not be printed in the record for the circuit court of appeals in this cause, no point being made thereon by the defendants.

This — day of November, 1900.

CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION,
By J. B. SIZER, *Solicitor.*
W. H. DENSON AND
R. E. DENSON,
By W. H. DENSON, *Counsel of Record.*

76 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1900. April 2, 1901.

W. H. DENSON ET AL.
versus
CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION.

(*Extract from Minutes.*)

This cause was regularly called this day and submitted to the court after argument by Mr. W. H. Denson for appellant and by Mr. J. B. Sizer for appellee.

November Term, 1900. April 16, 1901.

W. H. DENSON ET AL.
versus
CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION.

(*Extract from Minutes.*)

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Alabama, and was argued by counsel.

On consideration whereof: it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, reversed and this cause remanded to said circuit court with instructions to dismiss the bill.

It is further ordered, adjudged and decreed that the appellees * * * The Chattanooga National Building and Loan Association, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

77 United States Circuit Court of Appeals, Fifth Circuit.

WILLIAM H. DENSON and ROSA E. DENSON, Plaintiffs in Error,
versus
CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION, Defendant in Error.
No. 1028.

Petition to Rehear.

To the honorable the judges holding the court aforesaid:

Your petitioner, The Chattanooga National Building and Loan Association, the appellee in the above-styled cause, respectfully shows unto your honors that it is much aggrieved by the decision of this honorable court reversing the decree of the circuit court in the above-styled cause and remanding the cause with instructions to dismiss the bill, as more fully appears from the opinion of the court filed on the 16th day of April, 1901.

The question involved in this cause was whether or not the transactions on which the suit was based constituted a doing of business

in the State of Alabama, and if so, then whether petitioner should be repelled from court by reason of its failure to comply with certain requirements prescribed by the constitution and statutes of Alabama as conditions precedent to its right to do or transact any business in that State. It was contended by petitioner that said transactions did not constitute a doing of business in the State of Alabama, but that the contract sued on was made and to be performed in the State of Tennessee, and that it was beyond the power of the State of Alabama to prohibit the making, or forbid the enforcement, of such a contract. By and in its opinion aforesaid, this honorable court has decided adversely to petitioner's said contention, and has held that the transactions constitute a doing of business by petitioner in the State of Alabama, within the purview and inhibition of said constitutional and statutory provisions and that, petitioner not having complied with said provisions at the time the loan sued on was made, the courts would not enforce the contract.

Petitioner most respectfully shows unto your honors that among other cases cited by it to sustain its contention on the hearing of this case, was the opinion of Judge Hammond, in the circuit
78 court for the western district of Tennessee, in the case of Eastern Building and Loan Association *vs.* Bedford, reported in 88 Fed. Rep. page 7, *et seq.* The facts involved in that case were almost identical on every point with those in this case, and the Tennessee statute, invoked as a defense to the suit of the complainant therein, provided, in almost the same language as the constitutional and statutory provisions relied on in this case, that "it shall be unlawful for any foreign corporation to do or attempt to do any business or acquire any property within this State, without having first complied with the provisions of this act." The opinion of Judge Hammond was that the facts did not constitute a doing of business in the State of Tennessee, and for that reason the loan sued on was not affected by the statute in question.

It was stated at bar in the argument of this case, that the Bedford case, *supra*, having been appealed by the defendants to the circuit court of appeals for the sixth circuit, was then pending in the Supreme Court of the United States on certain questions or propositions of law which the said circuit court of appeals had certified to the supreme court. Petitioner has since discovered, however, that in fact the whole record in said cause was sent up to the supreme court, on its requirement, and the whole matter in controversy has been tried in that court, and has now been decided by it in an opinion delivered a few days after the rendition of your honors' opinion in this case. The supreme court has affirmed the decree of the circuit court in said cause, and has held and adjudged that the contract involved therein was not a doing of business in the State of Tennessee, and that the legislature of Tennessee had no power to prohibit the making of such a contract, or to interfere with its enforcement.

Petitioner verily believes that in no essential feature can the Bedford case be distinguished from this one, although in several particulars the facts in that case more strongly indicated a doing of

business by the complainant therein in the State of Tennessee, than do the facts in this case indicate a doing of business by your petitioner in the State of Alabama. Among such particulars, as was pointed out in petitioner's brief on the hearing of said cause in this court, were the facts (1) that the notes involved in the Bedford case were dated at the place of the borrower's domicile, while in this case they are dated at the place of the domicile of the lender of the money, and payee of the note; (2) that in that case, the com-
79 plainant corporation had a local board and a local agent in the State in which the borrower resided, while here, petitioner's only agent in Alabama was a traveling soliciting agent; (3) that there was no express stipulation in that contract, as there is in the one involved in this case, that the contract should be governed by the law of the place of payment, the domicile of the payee corporation; and (4) that the supreme court of Tennessee had expressly held that such a transaction as was there involved constituted a doing of business in that State, while the supreme court of Alabama, as petitioner contended, had not passed on the question under a state of facts such as is presented by the record in this case.

Petitioner is advised, and respectfully submits that even if this court should consider itself not absolutely bound to follow the opinion of the supreme court, it will yet give to that opinion great weight and consideration in passing on the same or similar questions.

In view of the importance of the question involved and of uniformity in the holdings thereon among the different Federal courts, and in further view of the great weight to be attached to the opinion of the supreme court on a question on which there has heretofore been, as held by this honorable court, a conflict of opinion, petitioner most respectfully but earnestly prays that your honors reconsider the former opinion delivered in this case and grant petitioner a rehearing thereof.

ROBERT PRITCHARD,
J. B. SIZER,
Solicitors for Petitioner.

I, J. B. Sizer, of counsel for the petitioner herein, do hereby certify that in my opinion the foregoing petition for a rehearing is well founded in point of law, and that the same is not interposed for delay.

J. B. SIZER.

United States circuit court of appeals,
Filed May 8, 1901.

J. M. McKEE, *Clerk.*

80 November Term, 1900. June 1, 1901.

W. H. DENSON ET AL.
versus
CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION. } No. 1028.

(*Extract from Minutes.*)

Ordered, that the petition for rehearing filed in this cause be and the same is hereby denied.

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1900.

WILLIAM H. DENSON and ROSA E. DENSON, Plaintiffs in Error,
versus
CHATTANOOGA NATIONAL BUILDING AND LOAN ASSOCIATION, Defendant in Error. } No. 1028.

Appeal from the circuit court of the United States, northern district of Alabama.

Before Pardee, McCormick, and Shelby, circuit judges.

PARDEE, circuit judge, delivered the opinion of the court:

The contention herein is that the contract sought to be enforced by the bill is illegal, on account of the failure of complainant to comply with the laws of Alabama prescribing the conditions under which foreign corporations may do business in that State. The laws in question are:—

"4. No foreign corporation shall do any business in this State without having at least one known place of business and an
81 authorized agent or agents therein; and such corporation may be sued in any county where it does business by service of process upon an agent anywhere in this State." Const. Ala., Art. XIV.

"1316. Foreign corporations must file instrument of writing designating agent and place of business in this State.—Every corporation not organized under the laws of this State shall, before engaging in or transacting any business in this State, file an instrument of writing, under the seal of the corporation and signed officially by the president and secretary thereof, designating at least one known place of business in this State and an authorized agent or agents residing thereat; and when any such corporation shall abandon or change its place of business as designated in such instrument, or shall substitute another agent or agents for the agent or agents designated in such instrument of writing, such corporation shall file a new instrument of writing as herein provided, before transacting any further business in this State." Code Ala. 1896.

"1318. Unlawful for foreign corporation to transact business in

this State before declaration filed; penalty.—It is unlawful for any foreign corporation to engage in or transact any business in this State before filing the written instrument provided for in the two preceding sections; and any such corporation that engages in or transacts any business in this State without complying with the provisions of the two preceding sections shall, for each offense, forfeit and pay to the State the sum of one thousand dollars." *Ib.*

"1319. Unlawful to act as agent of foreign corporation before such declaration is filed; penalty.—It is unlawful for any person to act as agent or transact any business directly or indirectly, in this State, for or on behalf of any foreign corporation which has not designated a known place of business in this State and an authorized agent or agents residing thereat, as required in this article; and any person so doing shall, for each offense, forfeit and pay to the State the sum of five hundred dollars." *Ib.*

The complainant below, The Chattanooga National Building and Loan Association, is, and was at the time the loan to Mr. Denson was made, a corporation under the laws of the State of Tennessee, with its principal office in the city of Chattanooga in that State. Among its corporate functions was the authorization, and, so far as we are advised, its sole business, was to loan its funds to its
82 stockholders on real-estate security. It had no local office or agent in Alabama, but it had a traveling agent whose business it was to solicit subscriptions to its stock and to obtain applications for loans and submit the same to the home office of the association at Chattanooga.

On the 25th of April, 1895, appellant Denson, who was a resident of Gadsden, Alabama, on the suggestion and at the solicitation of the agent, signed at that place a written application for fifty shares of stock in the association, complainant below, appellee in this court. This application was forwarded by the agent, to whom Mr. Denson delivered it, to the home office, where the stock was issued and returned to the agent to be by him delivered to Mr. Denson. On the same day on which he applied for his stock, Mr. Denson signed a written application to the association for a loan of $2,500 on the fifty shares of stock he had applied for. He offered a premium of $2,500 for the loan, and proposed to secure the loan and premium, if his application should be granted, by a mortgage on certain real estate in Gadsden, Ala., which he represented to be of the value, in all, of about $9,000. This application was accompanied by the report of two parties selected by the association fixing the value of the property which Denson proposed to mortgage at $8,000, and the certificate of an attorney, also selected by the association, with reference to the condition of the title. This application was forwarded by the agent to the home office in Chattanooga, where it was submitted along with other applications to the board of directors, by whom the application was granted and the loan directed to be made in accordance with the charter and by-laws of the association. Thereupon, a note and deed of trust were prepared at the home office, and were sent to the agent by whom Mr. Denson's application had been taken and forwarded; and at the same time the check of

the association on the Chattanooga National Bank of Chattanooga, Tenn., in favor of W. H. Denson for the sum of $2,367.50 was sent to one D. P. Goodhue of Gadsden, with instructions to him to deliver said check to Mr. Denson when he should have executed and delivered the note and deed of trust. Upon the execution of the note and deed of trust by Denson and wife and the delivery of the same to the agent, all at Gadsden, Ala., the agent delivered to Denson the check for $2,367.50, directing him to present the same to the First national bank of Gadsden, which would pay the same. The check was presented to the said bank and the face thereof paid over
83 to Denson, as the cashier said, "under an understanding with the said Building and Loan Association and that the Chattanooga national bank on which the check was drawn would pay the same on presentation."

The note given to the association by Denson is dated at Chattanooga, Tenn., and is made payable at the home office of the association in Chattanooga; and it expressly stipulates that it "is made with reference to and under the laws of the State of Tennessee."

The secretary of the association gives the following significant evidence:

"At the time the loan to defendant Denson was made, complainant association had been for some time soliciting subscriptions to stock and receiving applications for loans in the State of Alabama, and had paid a tax or license fee required under the laws of the State of Alabama, for foreign corporations proposing to do business in that State, and defendant's officers supposed and understood that the payment of this fee or tax was the only condition with which it was necessary for them to comply in order to be entitled to do business in that State. Subsequently, however, and some months after the loan to defendant Denson was made, complainant was informed by an attorney in the State of Alabama, that the Alabama statutes required foreign corporations doing business in Alabama, to designate a local agent on whom process against the association could be served, and also a local place of business in that State. Thereupon complainant promptly designated such local agent and place of business and continued up to the second of October, 1899, to pay the license tax or fee required of non-resident corporations doing business in Alabama, and to keep a local agent and place of business in that State."

The question presented in this case is not under the laws of which State is the contract of loan to be construed, nor in what place was the money loaned to be repaid; and this eliminates from the necessary consideration of this case very many of the adjudged cases cited in the briefs on both sides; and, we may say, with regard to the remaining cases cited, that it is impossible to reconcile them with each other, and that (as is generally the case where the courts have in mind to compel the payment of an honest debt as against prohibitory laws) the application and construction of the particu-
84 lar prohibitory laws and the reasons given therefor should generally be restricted to the individual case, and for other cases considered to be more or less instructive but never conclusive.

On the facts as recited in the present case, it is perfectly clear that all the business of loaning money to Denson, with the single exception, that the association in Tennessee said "Yes," was transacted in the State of Alabama, and that the contract was completed by the execution and delivery of a note and deed of trust and the payment of the money loaned, all in the State of Alabama; and, the same was "doing the business for which the association was incorporated" within the meaning of the constitution and laws of the State of Alabama, as above quoted. And it may be said, if all this be not the doing of business of a foreign corporation within the prohibition of the constitution and laws of Alabama, then the National Building and Loan Association of Chattanooga and other foreign associations engaged in the same business of loaning money on real security, may safely flood the State of Alabama with soliciting agents, make all the negotiations for loans, take real-estate securities therefor and fully transact all other business pertaining to their corporate functions as though incorporated therein, and yet neither be obliged to have a known place of business or any authorized agent within the State, nor pay any license tax or fee, as required of non-resident corporations doing business therein.

To show the construction and effect of the constitution and laws of Alabama regulating the transaction of business within the State by non-resident corporations, we cite from the decisions of the Alabama supreme court, which are without conflict on the subject:

"The real test is that applied in Beard *vs.* U. & A. Publishing Co., *supra;* is the corporation engaged in the transaction of business, or any part thereof, it was created and organized to transact? If it be, it 'does business' within the meaning of the constitution. If it be not—if the act it is doing, or has done, is not within its general powers and franchises—it is not the business to which the constitutional requirement is directed." Sullivan *vs.* Sullivan Timber Co., 103 Ala. 371, 380.

"The business upon the doing of which the plaintiff relied for a recovery was the loan of money by the defendant to a resident citizen of this State, the taking of a mortgage upon land of the borrower situated in this State to secure the debt, which was
85 evidenced also by promissory notes, with separate notes for instalments of the interest. Under the constitution and the statute a single act of business done, without complying with the prescribed conditions, is a violation of both: there need not be a carrying on of business. The loan of money here and the taking here of notes and mortgage to secure repayment, the mortgage being on land situated in this State, is the doing of business here within both the constitution and the statute. Guin *vs.* New England Mortgage Security Co., 92 Ala. 135; Farrior *vs.* New England Mortgage Security Co., 88 Ala. 275; Mullens *vs.* American Freehold Land Mortgage Co., 88 Ala. 280. And the facts that the notes and mortgage are executed here, though they may be payable elsewhere, and the land embraced in the mortgage is situated here, are sufficient to show *prima facie* that the transaction involves the doing of business by the lender and mortgagee in the State of Alabama. Farrior *vs.*

New England Mortgage Security Co., 88 Ala. 275; Mullens *vs.* American Freehold Land Mortgage Co., 88 Ala. 280." The State *vs.* Bristol Savings Bank, 108 Ala. 36.

And as a further instructive case on this subject:

"The bill alleges that the complainant corporation, "under its charter and laws of incorporation, had full power and authority" to loan the money and take the mortgage in controversy. In engaging in such a transaction, the complainant was in the exercise of its chief corporate function, as imported by its very name, and as admitted by the bill. The prohibition of the constitution is against 'doing any business in this State,' without compliance with the conditions specified. The doing of a single act of business, if it be in the exercise of a corporate function, is as much prohibited as the doing of a hundred such acts; and it is just as much opposed to the policy of the constitution, which is to protect our citizens against the fraud and imposition of insolvent and unreliable corporations, and to place them in an attitude to be reached by legal process from our courts, in the event of any existing necessity to bring suit against them to vindicate a legal right, or to contest the validity of any contract made by or with them. The phrase, 'doing any business,' is more comprehensive in meaning than the carrying on, or engaging in business generally, which involves the idea of continuance, or the repetition of like acts. All the adjudged cases, so far as we have examined, in and out of this State, assume this to be true, except the case
86 of Cooper Man. Co. *vs.* Ferguson, 113 U. S. 727; 2 Morawetz on Corp. (2d ed.), § § 661, 665, and cates cited. There it was said that a clause in the constitution of Colorado, like the one here under consideration, was not to be construed to prohibit a single act, but only 'the carrying on of business' by a foreign corporation. The act there done was the making of a contract in Colorado, to manufacture certain machinery in Ohio, to be delivered in the latter State for transportation to the purchasers in the former. The promise was a mere agreement to deliver goods in another State, and possibly was not the unlawful exercise of a corporate function. Beard *vs.* Union & Amer. Pub. Co., 71 Ala. 60. However that may be, we do not concur in the construction given, in which also two of the judges of the court rendering the decision, it seems, did not agree. Their concurrence in the judgment was placed solely on the ground, that the prohibition contained in the Colorado constitution, when directed against a sale of that character, would be an attempted regulation of commerce between the States,—and on this account void for repugnancy to the Federal Constitution.

"4–5. In Dudley *vs.* Collier, 87 Ala. 431, we discussed at some length this clause of our constitution, and the act of the legislature seeking to carry it into effect by the imposition of penalties on offending parties. We there distinguished Sherwood *vs.* Alvis, 83 Ala. 115, as involving the case of a foreclosed mortgage, by which the contract in question had become, in a measure, fully executed between the parties. This distinction is recognized, also, in the more recent deliverance of Craddock *vs.* American Mortgage Land Co., decided at the present term, which was determined on the authority

of that case. The legislative act cannot change the construction or meaning of the constitutional clause under consideration. It may throw light on its construction, and render its enforcement more effective; but it can neither add to, nor take from, the legal significance of its meaning, which was the same before as after the date of the enactment designed to give vigor to its execution. But the statute may be looked to as a legislative interpretation of the constitutional clause, and, as such, is entitled to much weight. Cooper Man. Co. *vs.* Ferguson, 113 U. S. 727; *Ex parte* Hardy, 68 Ala. 303.

"This case, in our judgment, must be governed by the rule declared in Dudley *vs* Collier, *supra*. The loan of the money by complainant to the defendant, was an act of corporate business
87 which was prohibited by the constitution; and this illegal act was the consideration of the defendant's promise to pay the borrowed money. The promise, therefore, was void and being executory, the courts will not lend their aid to its enforcement, for this would be a subversion of a regulation made for the public good.

"Apparent injustice, it is true, often follows from the application of provisions of this nature, by which contracts are annulled for illegality, or as obnoxious to good morals, or violative of public policy, or for repugnancy to positive statutes. But the law does not allow this result for the benefit of either of the offending parties, as being less censurable or more favored than the other. It only lets the parties, who are in equal fault, severely alone, as the surest mode of securing obedience to the authority of its mandates." Farrior *vs.* New England Mortgage Security Co., 88 Ala. 275, 278, 279.

Following the proper rule, as declared in the last-cited case, *i. e.*, to "let the parties who are in equal fault severely alone," the decree of the circuit court is reversed and the cause is remanded with instructions to dismiss the bill.

88 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing eighty-eight pages, numbered from *a* to 87, inclusive, contain a true copy of the record and all proceedings had, including the opinion of the court, in the case of W. H. Denson and Rosa E. Denson, appellants, *vs.* Chattanooga National Building and Loan Association, appellee, No. 1028, as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 18th day of January, A. D. 1902.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

89 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which William H. Denson and Rosa E. Denson are appellants and Chattanooga National Building and Loan Association is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of Alabama, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and
90 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of January, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

91 [Endorsed:] File No. 18,345. Supreme Court of the United States. No. 492, October term, 1901. Chattanooga National Building & Loan Asso'n *vs.* Wm. H. Denson and Rosa E. Denson. Writ of certiorari.

UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

In obedience to the command of the within writ, and by direction of the judges of the United States circuit court of appeals for the fifth circuit, I, Charles H. Lednum, clerk of said court, as a return to and in compliance with said writ, do herewith transmit to the honorable the Supreme Court of the United States, a true, full and perfect transcript of the record and all proceedings had in said court in the cause wherein William H. Denson *et al.* were appellants and The Chattanooga National Building and Loan Association was appellee, as fully and completely as the same now remains of record in my office.

Seal United States Circuit Court of Appeals, Fifth Circuit.

Given under my hand and the seal of said United States circuit court of appeals for the fifth circuit, at the city of New Orleans, Louisiana, this 18th day of January A. D. 1902.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

[Endorsed:] File No. 18,345. Supreme Court U. S., October term, 1901. Term No. 206. The Chattanooga National Building and Loan Association, petitioner, *vs.* Wm. H. Denson *et al.* Writ of certiorari and return. Filed Jan'y 21", 1902.